United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

74-2381

United States Court of Appeals

For the Second Circuit.

MICHAEL HOLODNAK,

Plaintiff-Appellee,

vs.

AVCO CORPORATION, AVCO-LYCOMING DIVISION, Stratford, Connecticut,

Defendant-Appellant,

and

LOCAL 1010, UNITED AUTO WORKERS OF AMERICA, Stratford, Connecticut,

Defendant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT, DISTRICT OF CONNECTICUT.

JOINT APPENDIX.

EUGENE N. SOSNOFF *of*
SOSNOFF, COOPER & WHITNEY,
Attorney for Plaintiff-Appellee,
Michael Holodnak,
35 Elm Street,
New Haven, Conn. 06510

ROBERT J. COONEY,
EDWARD MAUM SHEEHY *of*
PULLMAN, COMLEY, BRADLEY & REEVES,
Attorneys for Defendant-Appellant,
Avco Corporation,
855 Main Street,
Bridgeport, Conn. 06604

UNITED STATES COURT OF APPEALS FILED DEC 13 1974

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UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

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MICHAEL HOLODNAK,

Plaintiff-Appellee,

vs.

AVCO CORPORATION, AVCO-LYCOMING DIVISION,
STRATFORD, CONNECTICUT,

Defendant-Appellant,

and

LOCAL 1010, UNITED AUTO WORKERS OF AMERICA,
STRATFORD, CONNECTICUT,

Defendant,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT,
DISTRICT OF CONNECTICUT.

- -X

RELEVANT DOCKET ENTRIES.

RELEVANT DOCKET ENTRIES

I. Relevant docket entries

(a) 2/16/70 - Complaint filed.

(b) 2/18/70 - Motion for Permission for Service of Complaint by Indifferent Person, filed. Order entered granting permission to Mr. Peter J. O'Connell, 409 Orange St., New Haven, Conn., to serve complaint. Zampano, J..

(c) 2/18/70 - Summons issued and together with copies of same and of Complaint, Motion and attested copies of Order, handed to Attorney Johnson for service.

(d) 2/27/70 - Return of Service of Peter J. O'Connell, filed. - Summons & Complaint.

(e) 3/13/70 - Appearance of Dwight F. Fanton and Robert J. Cooney, entered for Defendants-Avco Corporation, Avco-Lycoming Division, Stratford, Conn., and William Ashlaw, Labor Relations Dept., Avco-Corporation, Stratford, Connecticut.

(f) 3/13/70 - Motion to Dismiss, filed for Defendants, Avco-Corporation and William Ashlaw.

(g) 5/4/70 - Defendants' Brief in Support of Motion to Dismiss, filed.

(h) 5/4/70 - Hearing on (1) Defendants' (Avco Corp., Avco-Lycoming Div. & William Ashlaw, Labor Relations Dept.) Motion to Dismiss and (2) Defendants' (Local 1010, UAW of America and Russell Booth) Motion to Dismiss. Decision Reserved on both motions. Zampano, J. M-5/5/70

(i) 6/1/70 - Objection to Filing of Brief by Connecticut Civil Liberties Union, filed by Defendants, Avco Corp., Avco-Lycoming Division, Stratford, Connecticut, and William Ashlaw, Labor Relations Department, Avco Corp., Stratford, Connecticut.

(j) 6/1/70 - Hearing on Plaintiff's Motion for Permission to Amend Complaint. "Motion granted, absent objection." Zampano, J. M-6/2/70 Copies mailed to all counsel.

(k) 7/17/70 - Ruling on Defendants' Motion to Dismiss. The Motions to Dismiss, filed by the Defendants Avco and Union are denied; the motion to dismiss submitted by the defendant Booth is granted. Zampano, J. Copies mailed to counsel. M-7/21/70.

(l) 11/2/70 - Answer and Special Defenses, filed by Defendants Avco Corp., and William Ashlaw.

RELEVANT DOCKET ENTRIES

(m) 2/7/73 - Appearance of Eugene No. Sosnoff, Esq., entered for plaintiff.

(n) 2/20/73 - Motion (of Eugene N. Sosnoff, Esq.) to Withdraw Appearance as Counsel, filed.

(o) 2/20/73 - Appearance of David Lesser, Esq., entered for Conn. Civil Liberties Union, amicus curiae.

(p) 3/7/73 - Motion to Withdraw as Counsel for Plaintiff filed by George A. Johnson, Esq., and Notice of Motion.

(q) 3/7/73 - Notice to Take Deposition of George A. Johnson, Esq., on 3/16/73 at 1:30 p.m., at Hall of Justice Bldg., 14th & Pearl Streets, Boulder, Colorado, filed.

(r) 3/19/73 - Hearing on Motion of George A. Johnson, Esq., to Withdraw as counsel for Plaintiff, endorsed: "Motion granted, absent objection." Latimer, M. M-3/20/73. Copies to counsel.

(s) Hearing on Motion of Eugene N. Sosnoff, Esq., to Withdraw as counsel for Amicus Curiae, Conn. Civil Liberties Union, endorsed: "Motion granted, absent objection, it being understood that Mr. Sosnoff is withdrawing as counsel for amicus curiae and remaining as counsel for plaintiff." Latimer, M. M-3/20/73. Copies to counsel.

(t) 3/23/73 - Appearance of Daniel Shepro, Esq., entered for Defendant-Local 1010, United Auto Workers of America, Stratford, Ct. (Letter received stating that Edward G. Burstein, Esq., who had an appearance on behalf of said defendant, died several months ago.)

(u) 6/4/73 - Defendants' (Avco Corp. and William Ashlaw's) Motion for Summary Judgment and Notice of Motion, filed.

(v) 6/4/73 - Plaintiff's Motion for Summary Judgment, filed, together with Notice of Motion.

(w) 10/10/73 - Ruling on Pending Motions for Summary Judgment, filed and entered. Latimer, M. So Ordered Zampano, J. M-10/10/73. Defendant William Ashlaw's Motion for Summary Judgment is granted, and plaintiff's and defendant Avco's cross-motions for summary judgment are denied. Copies to counsel, and to MJB, TEC, RCZ, JCN, AHL and U. Conn. Law Review.

(x) 10/11/73 - Partial Judgment, filed and entered. Defendant William Ashlaw's Motion for Summary Judgment is granted, and Plaintiff, Michael Holodnak's and Defendant, Avco's cross-motions for Summary Judgment are denied. Markowski, C. M-10/12/73 Copies to counsel.

RELEVANT DOCKET ENTRIES

(y) 4/29/74 - Plaintiff's Trial Memorandum, filed.

(z) 4/29/74 - Court trial commences: Counsel argue on Motion to Quash or Modify Subpoena duces tecum. Pltf. Ex. #1, filed. Court rules that it will not require Avco to produce documents but pltf. may renew the request later. Pltf. sworn and testified. Pltf. Exhibits 2 through 6, filed. Court recess: 11:35 a.m. to 11:48 a.m. Pltf. resumes stand. Pltf. Ex. 7A and 7B, filed for identification. Pltg. Exhibits 8 through 10 filed. Pltf. Ex. 11, filed for identification. Pltf. Ex. 12 and 13, filed. Court recess 12:46 p.m. to 1:55 p.m. Pltf. resumes stand for cross examination. Deft. Avco Ex. A, filed. Deft. Avco Ex. B, filed. Cross examination by Atty. Cooney terminated at 3:29 p.m. Cross exam. of pltf. by Atty. Shepro on behalf of deft. Union begun at 3:30 p.m. and terminated at 3:52 p.m Pltf.'s counsel begins redirect examination at 3:54 p.m. Pltf. Ex. 14, filed for identification. Pltf. Ex. 14, filed as full exhibit after oral argument by respective counsel. Re-cross examination begun by Atty. Cooney at 4:30 p.m. Court adjourned at 4:41 p.m. until 4/30/74 at 10:00 a.m. (Court opens at 10:45 a.m.)(R. DeRosa, D.C.) Lumbard, J., Sitting by Designation. M-5/1/74.

(aa) 4/30/74 - Court Trial continues: Court opens at 10:03 a.m. Pltf. resumes stand. Deft. Ex. C, filed for Avco. Deft. Union's Ex. D, filed for identification. Two pltf's. witnesses sworn and testified. Deft. Avco's Ex. E, filed. Court recess from 11:30 to 11:40 a.m. Counsel for pltf. offers to read the deposition of George A. Johnson. Defense counsel object to that part of the deposition containing Atty. Edward Burstein's testimony since he is deceased. Court reserves decision until the Court reads it. Pltf. rests at 11:59 a.m. Deft. Avco's Exs. F, G, H, I, filed. One defense witness sworn and testified. Avco rests at 12:10 p.m. One defense witness sworn and testified. Court recess from 12:47 to 1:55 p.m. Three defense witnesses sworn and testified. Trial concluded at 2:50 p.m. Court request all parties to submit briefs by May 14, 1974. Court reserves decision. Court adjourned at 3:00 p.m. until tomorrow May 1, 1974. (Beecher, R., DeRosa, D.C.) Lumbard, J., Sitting by Designation. M-5/1/74.

(bb) 8/15/74 - Opinion of the Court, filed and entered. LUMBARD, C.J., Sitting by Designation. M-8/21/74 Copies to all counsel of record, JEL, MJB, TEC, RCZ, JON, AHL and U. Conn. Law Review.

RELEVANT DOCKET ENTRIES

(cc) 8/27/74 - Plaintiff's Application for Counsel Fees, filed.

(dd) 9/5/74 - Objection of Defendant, Avco Corp., to Affidavit of Eugene N. Sosnoff for Counsel Fees and Expenses filed.

(ee) 9/5/74 - Motion for Evidentiary Hearing, filed by defendant, Avco Lycoming Div. of Avco Corp.

(ff) 9/16/74 - Plaintiff's Memorandum in Response to Avco's Objections to Counsel Fees, filed.

(gg) 9/16/74 - Supplemental Opinion with Respect to Attorneys' Fees, filed and entered. Lumbard, J., Sitting by Designation. M-9/23/74. Copies to counsel & J.E.L. Atty. E. Sosnoff to recover from Avco $13,498.91 and $6,749.45 from Local 1010, UAW.

(hh) 9/19/74 - Supplemental Opinion Awarding Costs, filed and entered. Clerk directed to tax costs in favor of plaintiff and against deft. Avco. Lumbard, J. Sitting by designation. M-9/23/74. Copies to counsel. (and to J.E.L. Copies of both Opinions entered this date sent to TEC, MJB, RCZ, JCN, AHL & U.Conn.

(ii) 9/19/74 - JUDGMENT, filed and entered. The Court having filed its Memorandum of Decision under date of 8/15/74, Hon. J. E. Lumbard, U.S.C.J., Sitting by Designation and Supplemental Opinion on 9/19/74, it is ORDERED: First cause of action - Pltf. recover of the deft. Avco Corp., the sum of $9,113.24 in back pay plus $10,000.00 in punitive damages with interest at 6% from the date of judgment; Second Cause of Action - Pltf.'s request for reinstatement to his former job at Avco as a result of the violation of his contractual rights under the collective bargaining is denied; Third cause of action - Pltf.'s claim that Local 1010 breached its duty of fair representation, thereby entitling him to reinstatement and monetary damages is denied. Further, that Atty. Sosnoff recover attorney's fees from Avco in sum of $13,498.91 and from Local 1010 the sum of $6,749.45. Costs are taxed in favor of the pltf. and against the deft. Avco only. MARKOWSKI, C. APPROVED: Hon. J. Edward Lumbard, U.S.C.J. Copies to Attorneys Curtis, Sosnoff, Fanton, Cooney, Shepro, Sheehy and Lesser, and to Lumbard, J. M-9/23/74.

RELEVANT DOCKET ENTRIES

(jj) 9/27/74 - CORRECTED JUDGMENT, filed and entered. The Court having filed its Memo. of Decision under date of 8/15/74, and Supplemental Opinion with respect to Attorney's fees on 9/19/74, it is ORDERED: First Cause of Action - Judgment in favor of the pltf. and against deft. Avco Corp., as follows: Pltf. recover of deft. Avco Corp., the sum of $9,113.24 in back pay plus $10,000.00 in punitive damages with interest at 6% from date of judgment; second cause of action - Judgment against the pltf. and in favor of deft. Avco Corp., as follows: Pltf.'s request for reinstatement to his former job at Avco, as a result of the violation of his contractual rights under the collective bargaining agreement, is denied.; and, third cause of action - Plaintiff's claim that the defendant, Local 1010, United Auto Workers of America, breached its duty of fair representation is upheld; Plaintiff's claim for reinstatemen and monetary damages as a result thereof is denied. Further, ORDERED that judgment be entered for Eugene Sosnoff to recover attorney's fees from Avco in the sum of $13,498.91 and from Local 1010, UAW, the sum of $6,749.45. Costs are taxed in favor of the plaintiff and against the deft., Avco, only. MARKOWSKI, C. APPROVED: J. Edward Lumbard, U.S.C.J. Sitting by Designation as U.S.D.J. Copies to counsel, and to J.E.L. M-10/2/74

(kk) 10/17/74 - Bond For Costs, filed, in the amount of $250.00 with surety, by defendant Avco Corporation, Avco-Lycoming Division, Stratford, Conn.

(ll) 10/17/74 - Notice of Appeal, filed by Defendant, Avco Corporation, Avco-Lycoming Division, Stratford, Conn. Copy with Docket entries sent Clerk, USCA

(mm) 10/17/74 - Motion For Supersedeas (bond), filed by Deft. Avco Corporation, Avco-Lycoming Division, and proposed Supersedeas Bond, filed.

(nn) 10/24/74 - Motion for Supersedeas (bond), endorsed: SO ORDERED, J. Edward Lumbard, U.S.D.J. Copies to counsel of record. M-10/29/1974.

(oo) 10/24/74 - Supersedeas Bond, in the sum of $50,000.00 binding Commercial Union Insurance Co., filed by defendant.

(pp) 10/29/74 - Defendant (Avco Corp., Avco-Lycoming Div.,) Motion Re Retention of Record, filed.

RELEVANT DOCKET ENTRIES

(qq) 10/31/74 - Deft's Motion For Retention of Record endorsed: "SO ORDERED. J. Edward Lumbard, U.S.C.J., Sitting by Designation." Certified copy sent Clerk, U.S.C.A Copies sent Attys. Cooney, Curtis, Sosnoff, Shepra, Sheehy, and Lesser. M-

Pursuant to Rule 30(b) of the Federal Rules of Appellate Procedure, the plaintiff, Michael Holodnak, hereby designates the parts of the record set forth below to be included in the Appendix.

1. The following relevant docket entries:

(a) 4/8/70 - Defendants' Brief in Support of Motion to Dismiss, filed.
(b) 5/22/70 - Brief of Amicus Curiae of Conn. Civil Liberties Union in Opposition to Motion to Dismiss, filed.
(c) 5/22/70 - Motion to Leave to Intervene as Amicus Curiae, filed.
(d) 2/7/73 - Notice to take Deposition Upon Oral Examination of George A. Johnson, at Univ. of Colorado Law School, Fleming Law Bldg. Boulder, Colo., at 10:00 A.M., Feb. 12, 1973, filed.
(e) 2/23/73 - Preliminary Pretrial Order, entered. So Ordered. Zampano, J. M-2/23/73. (Conf. date 2/14/73) Parties may file motions for summary judgment by 6/4/73 with such motions to be claimed for hearing on 6/18/73. Full pretrial conference to be promptly assigned following entry of decisions on any motions for summary judgment. Copies to attorneys and AHL.
(f) 1/29/74 - Notice to Take Deposition Upon Oral Examination, filed by Plaintiff. Deposition of defendant, Avco Corporation, Avco-Lycoming Division, by its vice-president, Beverly Warren, to be taken on 2/13/74 at 10:00 a.m., in the office of Sosnoff, Cooper & Whitney, 35 Elm St., New Haven, Conn.
(g) 4/23/74 - Deposition of Beverly H. Warren, filed.
(h) 4/29/74 - Plaintiff's Trial Memorandum, filed.
(i) 11/6/74 - Execution, filed and entered. M-11/7/74. Markowski, C.
(j) 11/6/74 - Motion to Designate Deputy Sheriff Jacob G. Miller to Make Execution on Judgment for counsel fees in the sum of $6,749.45 on deft. Local 1010, filed. Endorsed: "Approved." Zampano, J. M-11/7/74 Attested copies given to Atty. Sosnoff for delivery to Mr. Miller.

COMPLAINT.

Plaintiff appears and pleads alternative causes of action as follows:

I

For a first cause of action, plaintiff complains and says that:

1. This is a suit to vacate an arbitrator's award. This Court has jurisdiction under 9 USC Section 10.

2. Plaintiff is a citizen of the United States, a party aggrieved by an arbitration award rendered on November 18, 1969 after an arbitration hearing held in Stratford, Connecticut on July 17, 1969. Plaintiff at all relevant times was a member of defendant Local 1010 UAW (herinafter "Local 1010"). Plaintiff is a resident of Milford, Connecticut.

3. Defendant AVCO Corporation, AVCO-Lycoming Division, is a corporation doing business at several locations throughout the United States and at Stratford, Connecticut. Defendant AVCO Corporation will be referred to in this complaint as "AVCO".

4. Defendant William Ashlaw is an employee of AVCO and, upon information and belief, is the head of the Labor Relations Division of AVCO for the Stratford, Connecticut plant.

5. Defendant Local 1010, United Auto Workers (herinafter Local 1010) is a union local affiliated with the United Auto Workers Union. Local 1010 has been recognized as the bargaining agent for a number of production employees at the AVCO manufacturing plant in Stratford, Connecticut.

6. Defendant Russell Booth is the president of Local 1010.

7. Prior to May 28, 1969 plaintiff had been employed by AVCO at Stratford, Connecticut. He was also at all relevant times a member in good standing of defendant Local 1010.

8. On May 28, 1969, plaintiff was discharged from employment by defendant AVCO, solely because of his authorship and publication of an article expressing his views on labor issues, as more fully appears below. A copy of plaintiff's article is reproduced and affixed hereto as Appendix I.

COMPLAINT

9. On July 17, 1969 in Stratford Connecticut, plaintiff's grievance concerning his discharge was arbitrated. Burton Turkis, Esq., served as arbitrator, as provided in the Labor Management contract. Plaintiff was represented by Edward Burstein, Esq., on behalf of defendant Local 1010. Final decision was reserved at that time

10. On November 18, 1969, arbitrator Burton Turkis rendered an arbitration award against plaintiff, finding "just cause" for plaintiff's discharge with conclusive finality. A copy of the one page award is reproduced and affixed hereto as Appendix II.

11. The employment relations between plaintiff and the defendant AVCO were at all relevant times governed by the provisions of an existing labor management agreement between defendant AVCO and defendant Local 1010. Plaintiff is a third party beneficiary to many of the provisions of this contract as a member of Local 1010. The National labor management relations policy of the United States Government has for at least 30 years been designed and implemented to encourage and compel labor and management to negotiate such agreements. In pursuit of this settled labor management relations policy, the US Government has constructed a complex and interrelated edifice of statutory law, decisional law and governmental agency regulation and decision, all of which is design to promote, encourage and compel the formation of labor management agreements such as the one which at all relevant times was in force between AVCO and Local 1010.

In addition, the United States Government makes available the facilities of the National Labor Relations Board to oversee the conduct of both management and labor in nearly every aspect of their day to day activities. Thus the contract in force between AVCO and Local 1010 is heavily invested with a governmental presence and a governmental interest.

Since it is so heavily invested with a governmental interest, disputes arising under the contract cannot be resolved in a way which wholly ignores the mandates of the US Constitution, in particular the Bill of Rights thereof and specifically the First Amendment thereto. The award affirming plaintiffs discharge should be vacated because the arbitrator exceeded his powers as set out in Paragraphs 12-16.

12. The sole reason alleged by AVCO as "just cause" for plaintiff's discharge was plaintiff's authorship of a newspaper article, as is more fully described below. Plaintiff's authorship of the said article constituted an exercise of the freedoms of speech and press guaranteed plaintiff by the First Amendment. The only basis for the award thus constituted activity protected by the First Amendment and could not therefore form the basis for a valid award.

13. There was no evidence in the record from which the arbitrator could find "just cause" for plaintiff's discharge: the arbitrator thus exceeded his power.

14. The arbitrator had no power to ignore the overriding mandate of the First Amendment in making the award, which is totally inconsistent therewith and has the effect of chilling other exercises of First Amendment freedoms of speech and press in the future by plaintiff and other union members. The arbitrator had a duty to protect plaintiff's First Amendment rights and by his failure to do so, exceeded his power.

15. The arbitrator exceeded his power by construing the applicable law in such a way as to condition plaintiff's employment under the labor management contract on plaintiff's relinquishment of his First Amendment rights of speech and press, thus illegally subjecting plaintiff to unconstitutional conditions.

16. The arbitrator's award should be vacated because the arbitrator exceeded his power in making the award, in that the sole activity for which plaintiff had been disciplined was an alleged violation of Plant Conduct Rule Number 19 for which, upon information and belief, the maximum allowable penalty is a written warning. Thus the maximum punishment that could have been assessed in tha award was a written warning. The arbitrator therefore exceeded his power in upholding plaintiff's discharge.

17. The arbitrator's award should be vacated on the grounds that was evident partiality on the part of the arbitrator.

18. Plaintiff and defendant AVCO entered into a contract of employment on or about January, 1960.

19. Since January 18, 1960, plaintiff has been continuously employed by defendant AVCO. Just prior to May 28, 1969, plaintiff had been employed by defendant AVCO as a Parts A inspector at a base salary of $3.74 per hour.

20. At all relevant times, there was in effect between defendant AVCO-Lycoming and defendant Local 1010 a Labor Management contract which, inter alia, provided that no employee should be discharged without "just cause." This said labor management contract is the product of collective bargaining between the above named defendants. Such collective bargaining and such labor-management contracts are promoted, encouraged, supervised, administered and enforced by a panoply of Federal and State law and Federal and State agencies. The major source of

COMPLAINT

Federal law controlling the activities of the parties to this lawsuit is the National Labor Relations Act, as amended, and the Labor Management Relations Act. The major Federal administrative agency controlling the activities of the parties to this lawsuit is the National Labor Relations Board.

21. Plaintiff prior to his unlawful discharge wrote a signed article entitled "Building a Union Local', which was published on or about May 8, 1969, in the AIM Newsletter.

22. The AIM Newsletter was, at all relevant times, published bi-weekly in New Haven, Connecticut by the American Independent Movement (herinafter AIM), 148 Orange St., New Haven, Connecticut, as a part of AIM's efforts to inform the public about issues of importance to the community. The AIM Newsletter is sold by subscription and in many area newstands. Its circulation is about seven hundred fifty copies per issue.

23. The said article is not libellous or malicious: it is a fully protected expression of views wholly consistent with the First Amendment.

24. On May 28, 1969, shortly after publication of plaintiff's article in the AIM newsletter, plaintiff was summoned by written order to report immediately to the AVCO-Lycoming labor relations office. No notice or specification of any charges or accusations appeared on the written notice.

25. Upon arrival at the labor relations office, plaintiff was orally informed that a hearing was scheduled to investigate charges that he had violated Plant Conduct Rule No. 19, which forbids "Making false, vicious, or malicious statements concerning any employee, the Company or its product." Various employees of defendant AVCO were present, including Labor Relations Director William Ashlaw, and a security employee "John" Foster. Various functionaries of defendant Local 1010 were also present, including plaintiff's committeeman Joseph Mezick and plaintiff's steward Frank Guida.

26. The discharge hearing proceeded immediately. William Ashlaw presided and questioned plaintiff closely about the aforementioned AIM newsletter article. After a series of questions, William Ashlaw rendered a verdict that there was just cause to discharge plaintiff. A grievance was written out and signed by plaintiff on the spot and then plaintiff was escorted out of the plant.

27. Plaintiff later agreed with defendants AVCO and Local 1010 that the grievance should go to arbitration.

28. On July 17, 1969, the arbitration was held before Burton Turkis, the permanent arbitrator provided for in the labor management contract governing plaintiff and defendants. The only subject discussed at the arbitration was the aforementioned article. Plaintiff was represented at this arbitration hearing by Edward Burstein, Esq., of Bridgeport, Connecticut, representing plaintiff on behalf of the defendant Local 1010.

29. Said attorney Burstein prior to the arbitration hearing made comments to plaintiff which evidenced personal and political hostility toward plaintiff and plaintiff's article.

30. Said Attorney Burstein had, prior to the arbitration hearing, rebuffed attempts by undersigned counsel for plaintiff, at that time acting on behalf of the AIM newsletter, to aid Attorney Burstein in preparing a First Amendment defense to plaintiff's discharge.

WHEREFORE plaintiff respectfully requests the Court to vacate the award upholding his discharge, order his reinstatement at the same labor grade previously held with full back pay and accrued fringe benefits and pension rights as provided in the contract presently in existence, award him reasonable counsel fees, and award him such other relief as law and equity may provide.

II

For a second cause of action plaintiff complains and says that:

31. This is a suit by an employee against his former employer for breach of an existing collective bargaining contract. This court has jurisdiction under the provisions of 29 USC 185. The plaintiff is Michael Holodnak. Defendant is the AVCO Corporation, AVCO-Lycoming Division, as above. Plaintiff is a resident of Milford, Connecticut and defendant is a corporation doing business in Stratford, Connecticut.

32. Plaintiff hereby incorporates all allegations of Part I of this complaint and adds the following.

33. The relevant provision of the existing labor-management agreement between plaintiff and defendant allowed defendant to discharge or discipline employees for "just cause" only. The applicable provision of the contract has been reproduced and a copy is annexed hereto as Appendix III.

COMPLAINT

34. As detailed in Part I above, the sole cause alleged as reason for plaintiff's discharge was his authorship of the article described in Paragraphs 8, 21-23, allegedly in violation of Plant Conduct Rule No. 19. There was no "just cause" for plaintiffs discharge because:

a. The maximum penalty for a violation of Plant Conduct Rule No. 19 even if proven, is a written warning.

b. The article did not violate Plant Conduct Rule No. 19.

c. No construction of the plaintiff's article consistent with the First Amendment renders it "false, vicious, or malicious" within the meaning of Plant Conduct Rule Number 19.

d. The applicable labor-management contract (as described in Paragraph 20 above) is invested with an official government cast to such an extent that the action of defendant AVCO in discharging plaintiff for conduct wholly protected by the First Amendment (as alleged in Paragraphs 8, 21, and 23 above) constitutes a breach of the said contract.

e. Defendant's action in causing plaintiff's discharge as described in Paragraph 34(d) above constitutes a wilful breach of the aforesaid labor management contract deliberately designed to chill the exercise by plaintiff and other employees of their First Amendment rights of speech and press.

35. Plaintiff has been damaged by defendant's wilful breach of the labor management contract.

WHEREFORE plaintiff respectfully requests the Court vacate the award upholding his discharge, order reinstatement at the same labor grade previously held with full back pay, accrued fringe benefits and pension rights as provided by the contract then in existence, award him reasonable counsel fees, award him $30,000 punitive damages, and such other relief as law or equity may provide.

COMPLAINT

III

For a third cause of action, plaintiff complains and says that:

36. This is a suit against defendant Local 1010 for breach of the union local's duty of fair representation. This court has jurisdiction under 29 USC 185. Ford Motor Company v. Huffman 345 US 330, 73 SCt 681 (1953). Plaintiff is Michael Holodnak. Defendant is Local 1010 as above.

37. Plaintiff herewith incorporates all allegations of Parts I and II above as a part of this cause of action.

38. Defendant Local 1010 at all relevant times owed plaintiff the duty to represent him fairly in all grievances between plaintiff and defendant AVCO. See Ford Motor Co., Supra, Paragraph 36.

39. Defendant Local 1010 did not represent plaintiff fairly in all matters connected with his grievance concerning his discharge from defendant AVCO on May 28, 1969, described above in Part I, in that:

a. The union attorney Edward Burstein, Esq., expressed personal and political hostility to plaintiff as alleged in Paragraph 29.

b. The union attorney Edward Burstein, Esq., rebuffed attempts by undersigned counsel to aid Plaintiff, as alleged in Paragraph 30.

c. Upon information and belief, plaintiff's cause was not vigorously urged by the union attorney Edward Burstein, Esq., in particular those First Amendment aspects upon which plaintiff relies here.

40. Plaintiff has been damaged by defendant's breach of its duty to represent him fairly.

WHEREFORE plaintiff respectfully requests that the Court require the defendant Local 1010 to pay plaintiff damages as follows:

a. A sum equal to the difference between his average weekly wage prior to discharge and his average weekly wage in the employment he is able to secure in the future, multiplied by the number of weeks between May 28, 1969 and the date when plaintiff would have been required to retire from employment at defendant AVCO.

b. A sum which will allow plaintiff to secure on the private market pension insurance and health care benefits equal to those he enjoyed as fringe benefits prior to his discharge.

c. Reasonable counsel fees.

d. Punitive damages in the amount of $30,000.

e. Such other relief as law or equity may provide.

Dated at New Haven this 17th day of February 1970.

MOTION TO DISMISS OF DEFENDANTS AVCO AND ASHLAW, MARCH 9, 1970.

The undersigned defendants move the Court for an order dismissing the above case because of the following reasons:

1. The service of the summons and complaint on said defendants was insufficient and was not properly made because:

(a) As to the individual defendant, WILLIAM ASHLAW, neither personal service nor abode service was made upon him, nor was a copy of the summons and complaint left with an authorized agent.

(b) As to the corporate defendant, AVCO, a copy of the summons and complant was not delivered to an officer, managing or general agent, or any other agent authorized by appointment or by law to receive service of process on its behalf.

2. The Court lacks jurisdiction over the First Count of said complaint because:

(a) The only allegation for federal jurisdiction is the claim that said cause of action comes under the provision of the Federal Arbitration Act, Title 9 USC, §10, and said Act does not afford or confer on the Federal District Court an independent basis of federal jurisdiction.

MOTION TO DISMISS OF DEFENDANTS AVCO AND ASHLAW, MARCH 9, 1970

(b) Even if the Court had jurisdiction over the First Count under Title 9 USC, §10, the action of the plaintiff to vacate the Award is untimely because the Arbitrator's Award was filed on November 18, 1969, and delivered to the defendant, AVCO, on November 20, 1969, and the summons and complaint was allegedly served on the defendant, AVCO, on February 23, 1970, which is beyond the time provision of the Federal Arbitration Act, which provides, "Notice of a motion to vacate....must be served upon the adverse party....within three months after the Award is filed or delivered." 9 USC §12.

(c) Even if the Federal Arbitration Act (9 USC, §1, et seq) conferred original jurisdiction on the Federal District Court, §1 of that Title excepts from its operation contracts of employment of seamen, railroad employees or any other class of workers engaged in foreign or interstate commerce. 9 USC §1.

3. The Court should refuse to entertain jurisdiction over the Second Count because:

MOTION TO DISMISS OF DEFENDANTS AVCO AND ASHLAW, MARCH 9, 1970

(a) Parenthetically, the reasons set forth in paragraph 2(a)-(c) above as to why the Court lacks jurisdiction over the First Count of said complaint are restated and incorporated herein, since the plaintiff in paragraph 32 of the Second Count of the complaint has incorporated all the allegations of the First Count of the complaint in this Count, and, therefore, the Court is requested to dismiss the Second Count of the complaint for these same reasons.

(b) Although the plaintiff alleges in the Second Count of his complaint that his discharge was a violation of a collective bargaining contract, and, therefore, maintains that the Court has jurisdiction under Title 29, USC 185, in substance this claim is without merit. The plaintiff's discharge was arbitrated, and, under the terms and provisions of the contract referred to in the plaintiff's complaint, said arbitration was binding and final. Upon a timely application, the plaintiff may have

sought to correct, modify or vacate the Award, and he has, in fact, attempted to have the Award vacated by the prayers for relief set forth in his complaint. However, his Motion to Vacate was filed late. Consequently, the plaintiff should not be allowed to re-litigate the entire matter through a lawsuit in the Federal District Court, since he has failed to avail himself of the usual procedural remedies, if any, that may have been available to him under either the State or Federal Arbitration Acts.

WHEREFORE, it is respectfully requested that the Court dismiss this case as to the undersigned defendants for the reasons set forth above.

MOTION FOR PERMISSION TO AMEND COMPLAINT.

Plaintiff hereby moves for permission to amend his complaint to read as follows:

1. This is a suit to vacate an arbitrator's award.

This Court has jurisdiction under 29 USC 185 and 9 USC Sections 1-12.

RULING ON DEFENDANTS AVCO AND ASHLAW'S MOTION TO DISMISS.

The plaintiff, Michael Holodnak, instituted this suit against Avco Corporation, plaintiff's former employer, William Ashlaw, the head of Avco's Labor Relations Division, Local 1010, United Auto Workers, the bargaining agent for employees at Avco, and Russell Booth, president of the local Union. Holodnak moves to vacate an arbitrator's award and seeks compensatory and punitive damages on the grounds that his discharge from employment at Avco violated his rights under the First Amendment, and that the Union breached its duty fairly and adequately to represent him during the administrative proceedings. The defendants now move to dismiss the case.

When considering a motion to dismiss, the Court must accept the factual allegations of the complaint as true. Gardner v. Toilet Goods Ass'n., 387 U.S. 167, 172 (1967). And it is settled law that the action should not be dismissed unless it appears to a certainty that the plaintiff is entitled to no relief under any interpretation of the facts, which could be proved in support of his claim. Escalera v. New York City Housing Authority, ____ F.2d ____ (2 Cir. April 29, 1970).

RULING ON DEFENDANTS AVCO AND ASHLAW'S MOTION TO DISMISS

Holodnak was employed for nine years at Avco's plant in Stratford, Connecticut. On May 8, 1969, he caused an article to be published in the AIM NEWSLETTER, a private bi-weekly publication with a circulation of about 750 copies per issue. The article was highly critical of Avco's management and the Union's officers with respect to labor-management matters. On May 28, 1969, Holodnak was informed he had violated Plant Conduct Rule No. 19, which forbids "Making false, vicious or malicious statements concerning any employee, the Company or its product." On the same day he was fired.

Pursuant to the provisions of the collective bargaining agreement between Avco and the Union, grievance proceedings were commenced and the matter eventually proceeded to arbitration. After a hearing at which Holodnak was represented by the Union's attorney, the arbitrator, in a cryptic two-line award, ruled there was "just cause" for the discharge. Within three months thereafter, the instant suit was filed.

Avco contends that service or process was untimely and defective, that the Company is not subject to the provisions of the Arbitration Act, and that the Court lacks subject matter jurisdiction. The Court disagrees.

RULING ON DEFENDANTS AVCO AND ASHLAW'S MOTION TO DISMISS

Service was made upon Avco and defendant Ashlaw by leaving copies of the summons and complaint with one Thomas R. Smarz, the manager of Avco's Labor Relations Department. It is uncontroverted that Smarz represented to the process server that he was authorized to accept service for Avco and Ashland. On this record the service was effective and sufficient notice under Rule 4(d)(3), Fed. R. Civ. P. 2 Moore Federal Practice, § 4.22(2); Koninklikje Luchtvaart Maat. v. Curtiss-Wright Corp., 17 F.R.D. 49 (S.D.N.Y. 1955).

Avco next argues that Count One of the complaint must be dismissed because it is time barred under 9 U.S.C. § 12 which reads in pertinent part that a "Notice of a motion to vacate . . . must be served upon the adverse party . . . within three months after the award is filed or delivered." Here the award was filed on November 18, 1969, and delivered to the plaintiff on November 22, 1969. The complaint was filed on February 16, 1970, but it was not served forthwith because of the heavy pressure of business in the Marshal's office. Upon being notified that the Marshal was unable to serve the process immediately, the plaintiff moved this Court to allow service by an indifferent person. The motion was granted on February 18, 1970, and service was effected on Monday, February 23, 1970, one day beyond the limitations period.

RULING ON DEFENDANTS AVCO AND ASHLAW'S MOTION TO DISMISS

The mere fact that the plaintiff was unable to obtain the services of the Marshal to execute process would not, for that reason alone, be sufficient to excuse the late service. However, where, as here, the plaintiff exercised due diligence to secure a substitute means to perfect service within the time limit, and the defendants suffered no prejudice from the one day delay, justice requires that the plaintiff's cause of action be saved. Accordingly, under the circumstances, the Court is of the opinion that the timely filing of the complaint tolled the operation of the statute of limitations. American Guarantee Co. v. Caldwell, 72 F.2d 209, 212 (9 Cir. 1934); see also 85 A.L.R. 2d 780, at § 4; cf. Bomar v. Keyes, 162 F.2d 136, 140-141 (2 Cir.), cert. denied, 332 U.S. 825 (1947); Isaacks v. Jeffers, 144 F.2d 26, 28 (10 Cir.), cert. denied, 323 U.S. 781 (1944); Elizabethtown Trust Co. v. Konschak, 267 F.Supp. 46 (E.D.Pa. 1967); Hoffman v. Weir, 193 F.Supp. 727 (D.Ore. 1961); Lamberti v. Stamford, 131 Conn. 396, 40 A.2d 190 (1944); Austin, Nichols & Co. v. Gilman, 100 Conn. 81, 123 A.32 (1923).

Counts two and three, now amended to rely on 29 U.S.C. § 185 as a basis for jurisdiction, sound in contract and

therefore are governed by Connecticut's six-year statute of limitations. Conn. Gen. Stat. § 52-576; Auto Workers v. Hoosier Corp., 383 U.S. 696, 701-704 (1966); cf. Metal Products Workers v. Torrington Co., 242 F.Supp. 813, 818 (D.Conn. 1965), aff'd, 358 F.2d 103 (2 Cir. 1966).

Avco also asserts that since it is a corporation doing business at several locations throughout the United States, it is not subject to the provisions of the Arbitration Act. The Act excludes from its operation "contracts of employment of . . . workers engaged in . . . interstate commerce. 9 U.S.C. § 1. However, the Court of Appeals for this Circuit has interpreted this exclusionary clause to relate only to workers engaged in the movement of interstate commerce, i.e., the transportation industries, and not to employees who are "merely engaged in the manufacture of goods for interstate commerce." Signal-Stat Corporation v. Local 475, United Elec., Radio and Machine Workers, 235 F. 2d 298, 303 (2 Cir. 1956), cert. denied, 354 U.S. 911 (1957). See also Pietro Scalzitti Co. v. International U. of Op. Eng., Local No. 150, 351 F.2d 576 (7 Cir. 1965); Tenney Engineering v. United Electrical R. & M. Wkrs., 207 F.2d 450 (3 Cir. 1953).

RULING ON DEFENDANTS AVCO AND ASHLAW'S MOTION TO DISMISS

Avco's final contention is that the Court lacks subject matter jurisdiction because, under the provisions of the labor contract between Avco and the Union, an arbitrator's award is final and binding. There is substantial merit to a general rule which would prohibit an employee who is merely unhappy with an award from relitigating his case before another tribunal. See Local 1078, International Union U.A., A. & A.I.W. v. Anaconda, 256 F.Supp. 686, 688 (D.Conn. 1966). When a collective bargaining agreement provides for comprehensive grievance procedures and arbitration, "federal labor policy demands both initial recourse to such procedures and limited appeal from the decisions reached." Rothlein v. Armour & Company, 391 F.2d 574, 578-579 (3 Cir. 1968).

However, it is recognized that recourse to the courts must be available when a union perfunctorily pressed an employee's claim, Republic Steel v. Maddox, 379 U.S. 650, 652 (1965), or if the arbitrator did not consider or lightly passed over a constitutional issue raised by the employee. Dewey v. Reynolds Metals Company, 291 F.Supp. 786 (W.D.Mich. 1968). See also Vaca v. Sipes, 386 U.S. 171 (1967). In the case at bar the allegations of the complaint, taken as true

for the purposes of the motion to dismiss, indicate that the Union violated its duty of fair representation and that the arbitrator failed seriously to consider the important First Amendment issue present. Under these circumstances, the arbitrator's decision cannot be final.

The Union moves to dismiss the complaint on two grounds: 1) that the National Labor Relations Board has exclusive jurisdiction of a claim which involves an alleged breach of a union's duty of fair representation, and 2) that the plaintiff failed to exhaust available internal union remedies. Both contentions are without merit. It seems clear that the plaintiff is contending that the Union failed in bad faith, to fully and properly represent him during arbitration proceedings. Though the allegations of the complaint are somewhat inartistically drawn, they are sufficient to state a cause of action under 29 U.S.C. § 185. Vaca v. Sipes, supra; cf. Desrosiers v. American Cyanamid Company, 377 F.2d 864 (2 Cir. 1967); O'Sullivan v. Getty Oil Company, 296 F.Supp. 272 (D.Mass. 1969).

The final attack upon plaintiff's complaint is made by the defendant Booth, the President of the Union, who asserts that no cause of action has been sent forth against him.

RULING ON DEFENDANTS AVCO AND ASHLAW'S MOTION TO DISMISS

Since it is evident that there are no allegations in the complaint addressed to any wrongful conduct by the defendant Booth, his motion to dismiss is granted.

Accordingly, the motions to dismiss filed by the defendants Avco and the Union are denied; the motion to dismiss submitted by the defendant Booth is granted.

Dated at New Haven, Connecticut, this 17th day of July, 1970.

Robert C. Zampano
United States District Judge

ANSWER AND SPECIAL DEFENSES OF DEFENDANTS AVCO AND ASHLAW.

ANSWER TO FIRST CAUSE OF ACTION:

1. Defendants deny that this Court has jurisdiction under 9 USC Sections 1-12 and 29 USC 185. The remaining allegations of paragraph 1 are admitted.

2. Defendants deny that plaintiff is a party aggrieved by an arbitration award. The remaining allegations of paragraph 2 are admitted.

3.-7. The allegations of paragraphs 3 through 7 are admitted, except the allegation in paragraph 4, that William Ashlaw is the head of the Labor Relations Division of Avco, is denied.

8. Paragraph 8 is denied.

9. The allegations of paragraph 9 are admitted, except that the allegation "on behalf of defendant Local 1010" is denied.

10. The allegations of paragraph 10 are admitted, except the allegation "with conclusive finality" is denied.

11.-18. Paragraphs 11 through 18 are denied.

19. The allegations of paragraph 19 are admitted, except the allegation "at a base salary of $3.74 per hour" is denied.

20. Paragraph 20 is admitted.

21.-23. Paragraphs 21 through 23 are denied.

ANSWER AND SPECIAL DEFENSES OF DEFENDANTS AVCO AND ASHLAW

24. The allegations of paragraph 24 are admitted, except the last sentence of said paragraph is denied, because said notice stated that it was for the purpose of a disciplinary hearing.

25. The allegations of paragraph 25 are admitted, except that the alleged quotation of PlantConduct Rule No. 19 is not accurate or complete, and William Ashlaw was not, as alleged, the Labor Relations Director.

26. The allegations of paragraph 26 are admitted, except the allegation "discharge hearing" is denied.

27. It is admitted that the plaintiff requested the Union to process his grievance through arbitration in accordance with the terms of the labor contract entered into between the defendant, Avco, and the co-defendant, Union. The remaining allegations of paragraph 27 are denied.

28. The allegations of paragraph 28 are admitted, except the allegation "The only subject discussed at the arbitration was the aforementioned article" is denied, and it is further admitted that plaintiff was represented at this arbitration hearing by Edward Burstein, Esquire, of Bridgeport, Connecticut. The remaining allegations of paragraph 28 are denied.

29.-30. As to the matters alleged in paragraphs 29 and 30, this defendant does not have sufficient information or knowledge to form a belief and leaves the plaintiff to his proof.

ANSWER AND SPECIAL DEFENSES OF DEFENDANTS AVCO AND ASHLAW

ANSWER TO SECOND CAUSE OF ACTION:

31. Defendants deny that this is a suit for breach of an existing collective bargaining contract, and that this Court has jurisdiction under 29 USC 185. The remaining allegations of paragraph 31 are admitted.

32. Defendants' answer to paragraphs 1 through 30 of the First Cause of Action is hereby made their answer to paragraph 32 of this Cause of Action.

33. Paragraph 33 is admitted.

34.-35. Paragraphs 34 and 35 are denied.

ANSWER TO THIRD CAUSE OF ACTION:

The undersigned defendants do not plead to the Third Cause of Action because it is not against them, but is directed to the co-defendant, but, insofar as any allegations of said Third Cause of Action relate to these defendants, said defendants do not have sufficient information or knowledge to form a belief and leave the plaintiff to his proof.

FIRST DEFENCE:

The allegations of the First and Second Causes of Action fail to state a claim against the undersigned defendants, upon which relief can be granted.

ANSWER AND SPECIAL DEFENSES OF DEFENDANTS AVCO AND ASHLAW

SECOND DEFENSE:

The plaintiff's complaint is barred by the statute of limitations.

THIRD DEFENSE:

Under the provisions of the labor contract between the defendant, Avco, and the co-defendant, Union, the award of the arbitrator that the proof established just cause for the discharge of the plaintiff, with conclusive finality, is final and binding, and such an award is a bar to the instant complaint and has the effect of a final judgment.

MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS ASHLAW AND AVCO.

PRELIMINARY STATEMENT

1. The defendant, Avco Corporation and the Avco Lycoming Division (Stratford Plant) (hereinafter referred to as Avco), and the defendant, Local 1010 of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW-AFL-CIO) (hereinafter referred to as Local 1010), entered into a valid Collective Bargaining Agreement (hereinafter referred to as the Agreement) on July 14, 1967, the effective date of which was April 16, 1967, and which expired on April 15, 1970. (A copy of said Agreement is attached hereto as Exhibit A.)

2. Article XVI, Section 4, page 57, of said Agreement provided in pertinent part:

> The Company reserves the right to publish factory rules and regulations from time to time. Such rules as published are subject to changes, additions or deletions by the Company. ...

Pursuant to the aforementioned Article, Avco issued certain General Plant Conduct Rules, which were in effect on and prior to May 8, 1969 and which were incorporated in the Agreement by reference. (A copy of the General Plant Conduct Rules is attached hereto as Exhibit B.) (See answers of Avco to plaintiff's

Interrogatory 2d dated January 18, 1972.) These General Plant Conduct Rules were disseminated to Avco employees through printed material, including bulletin board posters and the employees' handbook. (See answers of Avco to plaintiff's Interrogatories No. 1a, b, and c, dated January 18, 1972, on file with this Court.)

3. The General Plant Conduct Rules in effect at the time herein relevant provided by way of introduction:

> In any enterprise there must be rules and regulations to govern the activities of the people involved in its operation. The following rules and regulations have been developed for use at Lycoming Division so that we may work together in an orderly manner without encroaching on the rights and privileges of others. The below listed rules constitute prohibited conduct. Offenses under these rules may be cause for suspension or discharge. (A copy of said General Plant Conduct Rules are attached hereto as Exhibit B.)

4. General Plant Conduct Rule 19 in effect at the time of the incident here in question prohibited:

> 19. Making false, vicious or malicious statements concerning any employee or which affect the employee's relationship to his job, his supervisors, or the company's products, property, reputation, or good will in the community. (A copy of said General Plant Conduct Rules are attached hereto as Exhibit B.)

5. Article V, Section 1a, of the Agreement concerning discharge and discipline provided:

> The Company shall have the right to discharge or discipline employees for just cause.

6. In Article I, Section 1, of said Agreement, Avco recognized Local 1010 as the sole and exclusive bargaining agent for all hourly paid maintenance and production employees and salaried plant clerical employees employed in the plant located in Stratford, Connecticut.

7. In Article IV, Section 1, of said Agreement, Avco and Local 1010 on behalf of all employees recognized and agreed upon a four-step grievance procedure, and further agreed that Burton Turkus should serve as the permanent Arbitrator during the term of said Agreement.

8. Article IV, Section 1, Step 4b, of said Agreement provided that any grievance not settled in Step 3 may be referred in writing by the Union to the Arbitrator and further provided:

> The arbitrator shall consider a properly submitted grievance without delay and shall render his decision promptly. The decision of the arbitrator shall be final and binding.

9. Article V of said Agreement entitled "Discharge and Discipline" provided that any grievance concerning the discharge or discipline of an employee should be submitted directly to the second step of the grievance procedure set forth in Article IV of said Agreement.

MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS ASHLAW AND AVCO

10. The plaintiff, Michael Holodnak (hereinafter referred to as the plaintiff), while he was an employee of Avco, wrote an article entitled "Building A Union Local", which was published on or about May 8, 1969 in the American Independent Movement Newsletter, a bi-weekly publication having a circulation in the greater New Haven area, in which article he made various false, vicious or malicious statements concerning his relationship to his job, his supervisors and the company's reputation or good-will in the community in violation of the prohibition contained in General Plant Conduct Rule 19. (A copy of the article in question is attached hereto as Exhibit C.)

11. On or about May 28, 1969, the plaintiff was summoned by written order to report to the Avco Labor Relations Office and a discharge hearing was held for a claimed violation of General Plant Conduct Rule 19, which resulted in the plaintiff's being discharged from Avco for violation of Rule 19. (See paragraph 24 of plaintiff's Complaint). As a result of his discharge, the plaintiff filed a grievance and agreed that the grievance should go to arbitration. (See paragraph 27 of plaintiff's Complaint). On July 17, 1969, arbitration of the plaintiff's grievance was held before Burton Turkus. The plaintiff was represented at the arbitration hearing by the late

MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS ASHLAW AND AVCO

Attorney Edward Burstein of Bridgeport, Connecticut, counsel for Local 1010, and a transcript of the arbitration proceedings was taken by the Post Reporting Service, 205 Church Street, New Haven, Connecticut. On November 18, 1969, the permanent Arbitrator rendered and filed the arbitration award wherein he found just cause for the plaintiff's discharge with "conclusive finality". (A copy of the transcript of the arbitration hearing held on July 17, 1969, and a copy of the Arbitrator's Award are attached hereto as Exhibits D and E respectively.)

12. Thereafter, the plaintiff instituted the above entitled action naming Avco, William Ashlaw, head of the Labor Relations Division of Avco (hereinafter referred to as Ashlaw), Local 1010 and Russell Booth, President of Local 1010 (hereinafter referred to as Booth) as defendants, requesting the Court: To vacate the aforementioned arbitration award; to reinstate him at the same labor grade with full back-pay and accrued fringe benefits and pension rights; and to award him reasonable counsel fees and $30,000.00 punitive damages. The Complaint was served on Avco on February 23, 1970, which is beyond the time limit of three months after the filing of the arbitration award provided by 9 U.S.C. §12. (See affidavit of Peter J. O'Connell attached hereto as Exhibit F.) The Complaint was dismissed as to Booth by decision of this Court (Zampano, J.) dated July 17, 1970.

MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS ASHLAW AND AVCO

The defendants, Avco Lycoming Division of Avco Corporation and William Ashlaw, the head of the Labor Relations Division of Avco at the Avco Lycoming Division, move the Court to enter a Summary Judgment in favor of the aforementioned defendants pursuant to Rule 56 of the Federal Rules of Civil Procedure dismissing the plaintiff's Complaint, as amended, for the reason that there is no genuine issue as to any material fact based on the record of the arbitration proceedings and on the award of the Arbitrator and that the aforementioned defendants are entitled to judgment as a matter of law on the following grounds:

1. The plaintiff's entire Complaint is barred by the three-month period of limitation in 9 U.S.C. §12 and by the award of the Arbitrator under Article IV, Section 1, of the Agreement, which has the force of a judgment and is res judicata in the same manner as a judgment of a court.

2. The Arbitrator did not exceed his powers in the respects claimed by the plaintiff in his Complaint in the first cause of action so as to enable this Court to vacate the arbitration award under 9 U.S.C. §10 in that:

a. The plaintiff's grievance was properly submitted to arbitration under the terms of the Agreement, and the Arbitrator determined that the plaintiff was discharged for just cause for violation of General Plant Conduct Rule 19 after a full hearing on the merits.

MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS ASHLAW AND AVCO

b. The article written by the plaintiff was not an activity protected by the freedoms of speech and press provisions of the First Amendment.

c. There was sufficient evidence in the record to establish just cause for the plaintiff's discharge for violation of General Plant Conduct Rule 19, since the plaintiff admitted in his sworn testimony that various statements contained in his article were false and were in violation of General Plant Conduct Rule 19.

d. The introduction to the General Plant Conduct Rules specifically provided that "offenses under these rules may be cause for suspension or discharge". The violation of General Plant Conduct Rule 19 by the plaintiff was just cause for the plaintiff's discharge.

e. There is no evidence in the record of the arbitration proceedings that the permanent Arbitrator was partial in handling the plaintiff's grievance.

f. There is no evidence in the record of the arbitration proceedings that the late Attorney Edward Burstein was either personally or politically hostile toward the plaintiff and the plaintiff's article.

MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS ASHLAW AND AVCO

3. The claims of the plaintiff in his second cause of action that there was not just cause for the plaintiff's discharge are barred by the award of the Arbitrator under Article IV, Section 1, of the Agreement, which has the force of a judgment and is res judicata in the same manner as a judgment of a court. Further, the claims of the plaintiff are not supported by the evidence in the record of the arbitration proceedings in that:

a. There was sufficient evidence in the record to establish just cause for the plaintiff's discharge for violation of General Plant Conduct Rule 19, since the plaintiff admitted in his sworn testimony that various statements contained in his article were false and were in violation of said Rule.

b. The action of the permanent Arbitrator in finding just cause for the plaintiff's discharge was an action by a private individual appointed pursuant to the Agreement between Avco and the Union and was not in any way limited or circumscribed by the freedom of speech and press provisions of the First Amendment of the Constitution of the United States.

4. There are no allegations in the Complaint nor evidence in the record of any wrongful conduct by the defendant Ashlaw.

5. Local 1010 and Attorney Edward Burstein represented the plaintiff fairly in all matters connected with the plaintiff's grievance concerning his discharge from Avco on May 28, 1969, as

the plaintiff admitted in his testimony at the arbitration proceeding. Subsequent thereto Attorney Edward Burstein died. (A copy of Edward Burstein's Death Certificate and a copy of the transcript of the deposition of George A. Johnson are attached hereto as Exhibits G and H respectively.)

6. There are no allegations in the plaintiff's third cause of action nor evidence in the record that Avco or Ashlaw either engaged in or acquiesced in the Union's alleged departure from its duty of fair representation and, therefore, summary judgment should enter in favor of Avco and Ashlaw.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.

Sirs:

Please take notice that upon the annexed affidavits of Michael Holodnak, John Fernandez, and Joelle Dominski, and all pleadings and other papers heretofore filed and proceedings had herein, the plaintiff will make a motion for summary judgment requesting

1. Immediate reinstatement to his job with the defendant AVCO together with all accrued seniority, pension and other job rights and benefits.

2. A prompt hearing to determine the monetary losses as a result of his wrongful discharge together with exemplary damages and reasonable counsel fees.

And the plaintiff will seek such other, further, different and alternative relief as to the Court may seem just and proper.

SUPPORTING AFFIDAVIT OF MICHAEL HOLODNAK.

Michael Holodnak, residing at 38 Morris Lane, Milford, Connecticut, being duly sworn, makes the following statement:

I am 49 years of age and the plaintiff in this action, and I submit this affidavit in support of this motion for summary judgment. The facts stated in this affidavit are based on my personal knowledge. I respectfully urge that no genuine issue exists as to any material fact. As the accompanying exhibits show, all facts with a substantive bearing on this motion are a matter of documentary evidence, including the transcript of the challenged arbitration proceeding.

I had been employed by the defendant Avco Corporation in its manufacturing plant in Stratford, Connecticut, for over nine years at the time I was fired on May 28, 1969. During my employment, AVCO worked almost exclusively on defense contracts, manufacturing aircraft engines and components under contract with the Department of Defense, which set the specifications for the work. A substantial part, if not all, of the equipment used in the work was government owned. Some 6,000 workers were employed in the Stratford plant, and the company had plants elsewhere in the United States. The company is clearly engaged in the manufacture of goods for interstate commerce and subject to the provisions of the National Labor Relations Act.

I was originally hired on January 18, 1960 as a skilled tool and dye maker. I worked for Avco in that capacity until 1963, when I transferred to the position of precision small parts inspector - the job I held when I was dismissed.

SUPPORTING AFFIDAVIT OF MICHAEL HOLODNAK

Prior to my dismissal, I had an unblemished employment record at Avco. No disciplinary action against me by the Company had been sustained. From 1964 to 1968, when I voluntarily resigned, I had been a union steward. Stewards are base line union officials with immediate contact with employees on the factor floor.

At the time of my dismissal, I was earning $3.74 an hour or $149.60 per week, based on a 40 hour week. In addition, I regularly earned some overtime pay which I estimate averaged 4 hours a week or approximately $20.00 in additional weekly earnings.

Avco employees were represented by a union, the defendant Local 1010 of the United Automobile Workers. My job was included in the collective bargaining unit, and I worked under the collective agreement negotiated by the union and the company, a copy of which is annexed as Exhibit 1. Under Article V, Sec. 1(a) of the agreement, no employee can be discharged or disciplined by the company except for "just cause".

In my free time, when I am away from the factory I write. Some of the things I write get published. I am the author of several novels, one of which has been printed, and I frequently write smaller pieces as well. I am self-educated, my schooling having ended after the 8th grade.

On May 28, 1969, at 9:30 a.m., without any prior notice or warning, I received a written order from the AVCO's Labor Relations office directing me to be present there in one-half hour for a "disciplinary hearing as outlined under the provisions

of Article V, Sec. 1(b) of the labor agreement. . ." (Pl. Ex. 2). I had received no prior indication that such a hearing would be held, and I had no idea what the hearing was about, nor did the order enlighten me in any way. The order was handed to me by a foreman.

My union steward, Frank Guida, who had also received a copy of the memorandum asked me what it was about. My union committee man, Joe Mezik, also inquired about the memo. (A committee man is the next union official in line after steward.). I told them both that I did not know. The two union representatives then inquired at the labor relations office and were told only that "you'll soon find out."

At 10:00 a.m. that morning, I appeared at the labor relations office along with the two union officials, Guida and Mezik. We were required to stand outside the door of the office for 10 minutes, and then we were ordered in. Present in the office were four company representatives: the defendant William Ashlaw, Matto Gavin, a labor relation officer, and Gilbert Parmerlee, general foreman. They were seated at a long table, and seated behind them was John Foster from the Avco security department. As soon as I and the two union officials sat down, Ashlaw produced a copy of an article written by me that was published in the "AIM Newsletter" of May 15, 1969 (Pl. Ex. 3, pp. 14-15). The Newsletter was the official voice of a political group in the New Haven area known as the American Independent Movement. The Newsletter dealt with prominent political and social issues of the day, with considerable emphasis on developments in the labor movement.

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After displaying the Newsletter, Ashlaw stated to me that I was accused of violating plant conduct rule 19 by publishing the article. A copy of the plant conduct rules is annexed as Exhibit 4. Ashlaw read several paragraphs from my article and asked me if I subscribed to what I wrote. I told him that I did. The union officials who were with me who had never seen the article before, asked for a recess in order to be able to read it. No attempt had been made by me to circulate or distribute the article in the plant. I had shown it to a few workers with whom I was friendly when it was in draft form, but that is all. Prior to my dismissal, most employees were unaware of its existence.

Mezik and Guida read the article in the hallway outside the labor relations office. After completing it, they told me that they did not see anything wrong with it, although they did not agree with every part of it.

We then went into the labor relations office again. Ashlaw said something about the article going "beyond the scope of normal process," and being "derogatory" and "inciting to labor problems." He said that since the article was "written, endorsed and embraced" by me, he was insisting on my dismissal. Mezik asked whether a less severe penalty could be applied. Ashlaw said "absolutely not". At one point in the meeting, Ashlaw turned to John Foster, the company securityofficer, and asked whether AIM was on the Attorney General's subversive list. Foster said that it was not.

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Ashlaw then asked me for my company identification badge, which I turned over to him, and he made arrangements for a foreman to escort me to the headquarters of the company's security guards. Before going there, the union representatives wrote out a grievance form for me to sign in order to permit my grievance to be processed under Article V of the contract (Pl. Ex. 5). I then proceeded to the guard headquaters, loaded my possessions into my automobile and drove off.

I had previously written another article for the AIM Newsletter which was published. A copy of that article is annexed as Plaintiff's Exhibit 6. Nothing was ever said to me about the earlier publication.

Shortly after my dismissal, I telephoned Attorney George Johnson. I had received his name from persons on the staff of the AIM Newsletter. They told me that Johnson was the attorney for the Newsletter, and that he would help me. I told Johnson what happened to me, and he confirmed that he would be happy to assist me because the staff of the AIM Newsletter recognized an obligation to defend writers from economic reprisals lest the news sources be so cowed that they would refuse to publish in the Newsletter. Johnson asked me whether I wanted him to intercede on my behalf immediately. I told him that I did not want to offend the union shop committee and indicate a lack of confidence in it, which might occur if he interceded immediately. I explained to him, however, that if the grievance could not

be settled in the pre-arbitration dispute settlement procedures, then I wanted him to intervene on my behalf and participate with the union attorney in the actual arbitration hearing.

Under Article IV of the collective bargaining agreement (Pl. Ex. 1), a four-step grievance procedure is called for culminating at the fourth step with arbitration. Under Article V of the agreement, a special procedure applies in cases of dismissals, with step one being dispensed with and the grievance moving directly into step two. The meeting with defendant Ashlaw and other company representatives in the labor relations office the morning of May 28 constituted Step two of my grievance contesting the discharge.

The fact is that the hasty manner in which the Step two "hearing" was summoned, with only one-half hour's notice and no prior warning that a dismissal was intended, did not comply with the requirements of Article V. section 1 of the agreement. That provision calls for notice in writing of a dismissal in advance of the Step two hearing. I did not receive such notice.

Sometime after May 28, 1969, I learned that the third step in the grievance procedure had been completed and the company had not changed its position, and that my case would be going to arbitration. I informed attorney Johnson of this, and he advised me that he had been in touch with Attorney Edward Burstein who represented the union, and had offered to assist him in presenting my case to the arbitrator.

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Attached hereto as Exhibit 7 is a transcript dated March 16, 1973 of the deposition of Attorney Johnson, who is presently residing in Colorado, where he teaches law. Attorneys for the company and the union were present at the deposition and cross examined. As Attorney Johnson makes clear in his deposition, and as is confirmed in the documentary exhibits attached to the deposition, on July 8, 1969 he telephoned Attorney Burstein and offered his assistance in the arbitration. Attorney Burstein readily accepted Attorney Johnson's offer, but told Attorney Johnson that he knew nothing about the case yet and that after he met with the president of the local union, he would get back to Attorney Johnson and talk to him further (Pl. Ex. 7, pp. 6-8). The fact is that Attorney Burstein never again attempted to communicate with Attorney Johnson, and even after the arbitration was over, he failed to answer Attorney Johnson's letter of inquiry (Ex. C attached to Pl. Ex. 7).

When the date of the arbitration was set, Attorney Johnson again made an attempt to get in touch with Attorney Burstein, but his telephone calls were unanswered (Pl. Ex. 7, pp. 11-12).

Following the arbitration, Attorney Johnson wrote to Attorney Burstein confirming his conversation of July 8, 1969 regarding my case and the offer to assist. He requested that Attorney Burstein communicate with him and bring him up to date in the matter. Attorney Johnson also telephoned Attorney Burstein before writing to him. Attorney Burstein never responded in any way to Attorney Johnson (Pl. Ex. 7, pp. 13-14).

SUPPORTING AFFIDAVIT OF MICHAEL HOLODNAK

The arbitration hearing was held on July 17, 1969 before Arbitrator Burton Turkis, the "permanent arbitrator" at the AVCO plant under Article IV, Step 4 of the collective bargaining agreement. Prior to the arbitration, no attempt was made by Attorney Burstein to meet with me and prepare for the hearing.

The arbitration hearing was held at the Howard Johnson's Motor Inn in West Haven. I arrived there about 8:50 a.m. on the morning of July 17 and waited around for about an hour until Attorney Burstein came in and I met him for the first time. A union representative handed him a copy of my article in the AIM Newsletter which he read in its entirety in my presence. He clearly had not previously seen it.

After reading the article, Attorney Burstein turned to me and said, "If I were the union, I wouldn't defend you." His attitude towards me was decidedly hostile. He told me that he thought AIM was a radical organization. He showed me a copy of an AIM leaflet he was holding in his hand which had been distributed at the AVCO plant. A copy of the leaflet is annexed as Exhibit 11(N). He told me that he sympathized with corporate executives who had to pay high taxes. I told him that I thought his sympathies were misplaced, and that corporate executives enjoyed tax loopholes that the working man did not have.

A transcript of the arbitration hearing was made, so there can be no dispute about what was said for the record (Pl. Ex. 8). Before the hearing even began, Attorney Burstein made the incredible concession that plant conduct rule 19 was a "fair and reasonable rule, regulation and policy requirement. . ." (Pl. Ex. 8, pp. 9-10).

He then made the even more incredible concession that conduct prohibited by the extremely vague and ambiguous rule 19, i.e., "making false, vicious or malicious statements concerning any employee or which affects the employee's relationship to his job, his supervisors or the company's products, property, reputation or good will in the community," does not come within the "exercise of free speech" (Pl. Ex. 8, p. 10). The net effect of these concessions by the union counsel was to start the arbitration with a waiver of my First Amendment rights.

Moreover, it has been recalled that Attorney Johnson specifically offered to assist Attorney Burstein in the arbitration in order to help defend the First Amendment claims in the proceeding (Pl. Ex. 7, p. 13). That the First Amendment was clearly an issue in the case is indisputable considering tha he arbitrator himself raised the issue before the arbitration was even underway.

The company, which had the burden of proof in the arbitrati called me as its first and main witness. I was on the witness stand the entire morning until recess at 1 p.m., and I returned to the stand from 2 to 3 p.m. The other witnesses, whose testimony was inconsequential, were completed in a half an hour. The bulk of the questionning to which I was subjected turned out to be a scouring and raking over of my mental processes in an attempt to ascertain my motivations and justification for writin the article. The proceedings can fairly be described as a publi inquisition into my private beliefs and personal background.

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Only token resistance to this effort was interposed by union counsel. The arbitrator willingly joined with the company in scrutinizing my personal background and beliefs. I was interrogated about the books I read (Pl. Ex. 8, p. 28), the candidates I supported for political office (Pl. Ex. 8, pp. 29-30), my views on "corporatism" (Pl. Ex. 8, p. 31). The arbitrator deemed it proper for the company to inquire whether my views on "corporatism" (whatever that might mean) "influenced" my article "to any extent" (Pl. Ex. 8, p. 34).

The arbitrator himself felt it proper to inquire of me whether I had visited Cuba in 1960 (Pl. Ex. 8, p. 34); and published articles about the trip and my views on the "Castro system" (Pl. Ex. 8, pp. 35-38). Attorney Burstein, who presumably was representing me, asked me whether I wrote the article with "an idea of advocating any revolutionary form of overthrow of the corporate structure" (Pl. Ex. 8, pp. 103-104).

Much of the arbitration was taken up with haranguing me about the basis for the claims made in the article (Pl. Ex. 8, p. 43). The arbitrator himself joined in the process, and he obviously relished justifying his own function as the permanent impartial chairman in the AVCO grievance procedure and emphasizing claimed advantages for this procedure over a system of ad hoc arbitrators (Pl. Ex. 8, pp. 48-50, 53-54). He questionned me intensively about my motives for writing the article (Pl. Ex. 8, p. 55). He was insistent on knowing what "signals" I was sending out to my readers (Ex. 8, pp. 60-64).

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Much like a Kremlin confessional, the arbitrator and union counsel sought to cleanse my mind for public viewing and extract from me admissions that "now you know differently don't you." (Pl. Ex. 8, p. 67), and that the article was a "result of certain mistakes you made," and another one like it would not be written if I were returned to work (Pl. Ex. 8, p. 104). The arbitrator, who was supposed to decide my grievance in an impartial manner, was actually more concerned with the public image of the union and the company. He was not above puffing their reputations with rhetorical questions such as (Pl. Ex. 8, p. 69):

> "Well, certainly when you wrote the article, you knew that there was no shortcoming, that this was not a supine Union that sat by and allowed the Company to do whatever it wanted. You knew that when you wrote it."

Following the arbitration, the brief filed by the union was grossly condescending of me and portrayed me as a pitiable subject aspiring to accomplishments beyond my station and bringing down upon myself ridicule for these unseemly efforts (Pl. Ex. 9). The brief described me as "politically conscious to an inordinate degree" [whatever that means]. It stated that I was a living example of the cliche that "a little knowledge is a dangerous thing". It portrayed me as woefully ignorant, stating with exclamation point that "that which he knows is but a scintilla of what he doesn't know!" (Pl. Ex. 9, p. 2). The brief repudiated my testimony throughout the hearing (and this was presumably my counsel writing the brief on my behalf) as "replete with examples

of this man's superifical knowledge, which because it is gleaned informally is oft times wrong and even child-like in its naivete." (Pl. Ex. 9, p. 3).

It described me as "struggling hard to rise from the sewer of ignorance" and claimed that my "attempts to learn have exposed me to wrongful tenets". It confessed for me that I "really knew not what [I] was doing" (Pl. Ex. 9, p.3).

Following the filing of briefs, the arbitrator, in a terse one-sentence decision, offering no explanation for the result reached, upheld the discharge stating that the proof "establishes the just cause for the discharge. . .with conclusive finality" (Pl. Ex. 10). Despite a prediction of union counsel at the outset of the arbitration hearing that "what is going to transpire" at the hearing would have "repurcussions that will go through the labor circles and the court circles of the country" (Pl. Ex. 8, p. 8), the arbitrator was content to stay out of the limelight with a discreet one sentence decision wholly conclusory in form.

Since my dismissal on April 28, 1969, I have not worked. During part of this time I have been ill and could not work, but for much of the period there was work at AVCO I could have done.

While the article I was fired for was not distributed at the plant, employees of AVCO are constantly flooded with circulars and leaflets, much of it very critical of management and union officials and others. Attached hereto as Exhibit 11 is a sheaf

of circulars and leaflets representative of the type of material that circulates the plant which I collected over the years. No disciplinary action has ever been taken against any of the authors of these poison pen missives. Innumerable examples of statements that could be said to violate plant conduct rule 19 could be pointed out.

Picking at random through Exhibit 11, the management of the plant is accused of having instituted a "virtual reign of terror," of "negligence, mismanagement and inefficiency" (Pl. Ex. 11B); the labor relations office headed by the plaintiff William Ashlaw is described as thriving "on confusion" (Pl. Ex. 11d). The company is said to resort to "stalling, distorting and twisting, reneging (sic) and resorting to untruths to avoid resolving grievances" (Pl. Ex. 11e). Management is described as "lax and incompetent." Supervisors are said to be "wasting time with the female help," and "taking over an hour to drink. . .lunch". (Pl. Ex. 11e). Plant managers are described as "the Mickey Mous managers of Stratford's Disneyland" with "a superb talent for being both inconsistent and incompetent" (Pl. Ex. 11f). General foremen at the plant are portrayed as "brainless". The supervision at the plant is referred to as "the political cesspool on mahogany row" that "has no regard for human dignity. . . ." The plaintiff, William Ashlaw, is depicted as reenacting a "weekly farce" in his conduct of grievance meetings. Numerous other examples could be cited. AVCO management and employees are not strangers to the give and take of fighting words and angry pamphleteering.

SUPPORTING AFFIDAVIT OF MICHAEL HOLODNAK

Moreover, it makes no difference, as the annexed affidavit of John Fernandez shows, that material is published in organs outside the plant. Fernandez was not disciplined for publishing an article in the Bridgeport Sunday Herald in which he was very critical of the arbitration process. I have no idea why in the hard-punch pamphleteering environment that exists at AVCO, I was singled out for punishment. Perhaps it was something I said or the way I said it that particularly stung management and/or the union. Perhaps they did not like the publication that I chose to print my article. Whatever the situation, I do not believe that it is for the management or the union to play the role of literary czar in the massive distribution of circulars that goes on in and around AVCO.

Wherefore, I respectfully pray that this Court grant my motion for summary judgment and order my immediate reinstatement to my job at AVCO, and that it set this matter down for hearing solely on the question of monetary damages including reasonable attorneys' fees.

Michael Holodnak

Michael Holodnak

SUPPORTING AFFIDAVIT OF JOELLE DOMINSKI.

Joelle Dominski, residing at 473 Elm Street, New Haven, Connecticut, being duly sworn, makes the following statement:

This affidavit is submitted to apprise the Court of certain facts regarding the AIM Newsletter of which I have personal knowledge.

I was one of the staff of the AIM Newsletter on May 15, 1969, when the plaintiff Michael Holodnak's article was published that resulted in his dismissal by AVCO. The AIM Newsletter had been in publication for several years prior to printing the article. The Newsletter was the official organ of the American Independent Movement, a political party in Connecticut.

In May 1969 when the Holodnak article appeared, the Newsletter had a circulation of roughly 750 copies. The Newsletter was sold on New Haven news stands and by mail subscription. The largest part of the circulation was in the City of New Haven. Most of the other subscribers were located somewhere in the Third Congressional District. There were a small number of Connecticut subscribers outside the Third Congressional District, and an even smaller number out of state.

The American Indepent Movement, for which the Newsletter was the voice, came into existence as a molding together of peace groups centered around Yale University and community organizations in ghetto neighborhoods of New Haven. In the early years of

publication, the main focus of attention of the Newsletter was community action including urban renewal and planning. But by 1969, when plaintiff's article appeared, the Newsletter had begun to shift its emphasis to the activities of organized labor and rank and file workers.

Some corporations subscribed to the Newsletter. I remember in particular that the Southern New England Telephone Company was a subscriber. I do not recall whether the defendant AVCO subscribed, although it may have.

Prior to publication of plaintiff's article on May 15, 1969, the American Independent Movement had distributed leaflets at the AVCO Plant. Plaintiff's Exhibits 11N and 11O are examples of such leaflets.

The AIM Newsletter ceased publication in May 1970 and was succeeded by a newspaper known as "Modern Times," which has a circulation of between 3,000 and 4,000. "Modern Times", just as the AIM Newsletter, stresses labor news. The plaintiff is a contributor to Modern Times, as he was a contributor to the Newsletter.

AVCO's dismissal of plaintiff for publishing an article in the Newsletter has had a detrimental effect on the Newsletter which has carried over to Modern Times. Following his dismissal, it was necessary for the staff of the Newsletter, as it has been necessary for the staff of Modern Times, to warn all contributors of news and commentary that they may be subject to job reprisals.

SUPPORTING AFFIDAVIT OF JOELLE DOMINSKI

This naturally has discouraged contributions, and it has also required suppression of the names and identities of authors thereby reducing the value and effectiveness of their articles.

I am on the staff of Modern Times, as I was on the staff of the Newsletter. No compensation was paid to the staff of the Newsletter. Contributors of material receive no compensation either.

I have read the foregoing affidavit consisting of 3 pages, and the same is true to the best of my knowledge, information and belief.

Joelle Dominski

Joelle Dominski

SUPPORTING AFFIDAVIT OF JOHN M. FERNANDEZ.

John M. Fernandez, residing at 17 Woodside Path, West Haven, Connecticut, being duly sworn makes the following statement:

I have been employed by the AVCO Corporation for over 20 years and have been active in union affairs.

Approximately one month before publication of the plaintiff Holdonak's article, I wrote a lengthy letter to the editor of the Bridgeport Sunday Herald which was published on April 13, 1969. A copy of that letter is annexed as Exhibit 12.

As the Court can see, the letter is critical of the quality of union representation the average employee can expect, and the competence and even-handedness of arbitrators in achieving collective bargaining justice.

I described the arbitrators as having "numbed" consciences and frequently upholding punitive action against employees even when they suspected "shenanigans" of one kind or another. No action was taken against me for the letter. I have written many similar letters and distributed material of this character in the plant.

At the time of plaintiff's dismissal, a vast amount of vituperative, muckraking and scurrilous literature constantly circulated in the AVCO plant among employees. Most if it was put out by the union itself, which frequently blasted management for its response to union demands. There was also much tough give-and-take electioneering between union incumbents and adversaries. The leaflets comprising Exhibit 11 are just a minuscule sampling of the vast literary output in the plant.

SUPPORTING AFFIDAVIT OF JOHN M. FERNANDEZ

It is unheard of for any employee or union official to be disciplined for exercising First Amendment rights in such a manner. The dismissal of the plaintiff for his publication, which was not even circulated in the plant, is a singularly arbitrary and capricious act. Considering the vast rivers of literature that flowed through the plant, plaintiff's dismissal was aberrational in the extreme and borders on the irrational.

I have no idea why the company reacted to plaintiff's publication in the way that it did. I can only surmise that something he said or the way he said it touched on the truth in a manner the union and/or the company found unbearable. Or, perhaps company officials do not like the politics of the American Independent Movement which had circulated a leaflet in the plant complaining about the high salaries of AVCO executives (Plaintiff's Exhibit 11N). And they chose to be offended by plaintiff's choice of publication for his article.

In any event, considering the literature that passed through the plant in a never-ending procession, most of it generated by the union itself, the decision to dismiss Mike Holodnak for publishing something far removed from the plant is just so cruelly inexplicable as to defy comprehension.

I have read the foregoing statement consisting of 3 pages and the same is true to the best of my knowledge, information and belief.

John Fernandez

COURT'S RULING ON DEFENDANT AVCO'S MOTION FOR SUMMARY JUDGMENT.

Challenging the validity of an arbitration award which found contractually requisite "just cause" for his discharge from employment, plaintiff seeks an order vacating that award pursuant to § 10 of the United States Arbitration Act (9 U.S.C. § 10), and reinstatement and damages as remedies under § 301 of the Labor Management Relations Act (29 U.S.C. § 185) for his employer's alleged breach of the applicable collective bargaining agreement and his union's alleged breach of its duty of fair representation, cf. Vaca v. Sipes, 386 U.S. 171 (1967). Defendant William Ashlaw, the Avco official who precipitated the instant controversy by firing plaintiff, has moved for summary judgment; as it is patent from the very posture of this suit that defendant Avco sufficiently authorized or ratified and is responsible for the dismissal, cf. 29 U.S.C. § 185(b) and (e), and since plaintiff has neither alleged nor offered any evidence supporting a recognized ground of separate recovery from the individual defendant, Mr. Ashlaw is entitled to judgment in his favor as a matter of law, cf. Atkinson v. Sinclair Refining Co., 370 U.S. 238, 245-249 (1962). Plaintiff and defendant Avco have also brought on cross-motions for summary judgment on a substantial record of documentary evidence, including a transcript of the prior arbitration proceedings. For the reasons set forth below, the latter motions must be denied.

The record submitted tends for present purposes to show, inter alia, the following:

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Plaintiff, an employee of over nine years' standing and with no prior disciplinary record, was fired in May of 1969 as the result of his writing an article entitled "Building A Union Local" which appeared in the "AIM Newsletter", a New Haven-based publication with a circulation of approximately 750. The article was highly critical of Avco; although in most respects rather moderate in tone and phrasing in comparison with many other pamphleteering efforts by union members which had attracted no disciplinary attention, one brief passage could have been taken as suggesting the desirability of wildcat strikes as a tactic of last resort. The basis for plaintiff's dismissal was alleged violation of the company's Rule 19, one of a number of long-standing "general plant conduct rules" promulgated unilaterally by defendant Avco, and which provides for possible suspension or discharge for

> "Making false, vicious or malicious statements concerning any employee or which affect the employee's relationship to his job, his supervisors, or the Company's products, property, reputation, or good will in the community."

The collective bargaining agreement then in force did not specifically discuss the status and effect of such existing conduct rules, but did expressly recognize the employer's general right "to publish factory rules and regulations from time to time" and "to discharge or discipline employees for just cause". Plaintiff's firing grievance was brought to arbitration in July of 1969 in accordance with the labor con-

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tract's grievance processing provisions. Union counsel representing plaintiff conferred with him for the first time -- and apparently also read the offending article for the first time -- shortly before the proceedings opened, was unclear at the outset which rule violation the employer was relying upon, and seemingly conceded under preliminary inquiry by the arbitrator that Rule 19 (1) represented a reasonable policy requirement, (2) infringed no basic right to freedom of speech, and (3) rendered an employee subject to discharge for a maliciously false statement whether or not the statement caused actual harm to the employer. With the issues thus remarkably narrowed, the hearing consisted largely of interrogation of plaintiff, extensive questioning on such matters as the factual basis for his terming management "stupid" and whether his background and beliefs would suggest malicious intent underlying any inaccuracies in the article. The arbitrator's ultimate award of November 18, 1969 recited little more than a conclusion that the "proof establishes the just cause for the discharge . . . with conclusive finality".

The disappointed grievant ordinarily may not litigate an arbitrated claim de novo when, as here, the relevant collective bargaining agreement provides that the arbitrator's decision within his jurisdiction to determine "questions involving the interpretation, application or alleged violation" of the labor contract's terms is "final and binding"; judicial

adherence to the settled federal policy of encouraging peaceful settlement of labor disputes through arbitration dictates refusal to re-examine the merits of an adequately arbitrated controversy. See United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 596-597, 599 (1960). But no public interest is served by an unfair arbitration process, for loss of confidence in the agreed-upon method for resolving irreconcilable differences can only embitter employer-employee relations, and in this suit plaintiff specifically claims that clear disregard of his contract right not to be discharged except for "just cause" went unrecognized because of bias on the part of the arbitrator and a fundamentally deficient presentation of the grievance by union counsel.

As to the alleged bias, a question of partiality evident on the face of the arbitration hearing transcript, cf. 9 U.S.C. § 10(b), Ballantine Books, Inc. v. Capital Distributing Co., 302 F.2d 17, 21 (2 Cir. 1962), the Court is not persuaded that the arbitrator displayed any hostility to plaintiff or predisposition to favor the company's stance; as permanent arbitrator under the contract with prior experience of plant conditions, he did evince firm views concerning the efficacy of grievance procedures and of the union's role in pressing grievance claims, views apparently concurred in by plaintiff at the hearing in explaining portions of the newsletter article, but there is simply no evidence of a tendency

to pre-judge the merits of plaintiff's dismissal. The significant aspect of the transcript is the narrow scope of inquiry stipulated to by counsel at the outset, and not the manner in which the arbitrator conducted that inquiry.

Confronted with a seldom-invoked and vaguely phrased conduct rule susceptible of capricious application, union counsel virtually equated the rule's interpretation most favorable to management with "just cause" for discharge. It is extraordinary that plaintiff's representative should not have urged careful differentiations between factual statements and expressions of opinion, or at a minimum that the unilaterally drawn rule be construed to require that allegedly "false, vicious or malicious" criticisms of the employer be shown to have affected "the Company's products, property, reputation, or good will in the community". Counsel must have known that plaintiff's freedom of expression concerning union affairs was protected at least to such an extent by the "bill of rights" for union members, see 29 U.S.C. § 411(a)(2), Cole v. Hall, 462 F.2d 777, 778-779 (2 Cir. 1972), aff'd, ___ U.S. ___, 41 U.S.L.W. 4658 (1973), Salzhandler v. Caputo, 316 F.2d 445, 450-451 (2 Cir.), cert. denied, 375 U.S. 946 (1963); while that legislation creates no right against employer interference with comment on management matters, cf. Abrams v. Carrier Corp., 434 F.2d 1234, 1250 (2 Cir. 1970), cert. denied sub nom. United Steelworkers of America v. Abrams, 401 U.S. 1009 (1971), Rule 19 could reasonably be interpreted

as affording the employer no greater latitude to discipline an employee's speech, and it is at best remarkable that counsel would concede that a harsher rule could furnish "just cause" for an outright firing, especially since intemperate speech aimed at the employer had apparently been neither rare nor generally considered noteworthy. Viewed in the light of plaintiff's claim of a hasty, last-minute preparation for the hearing, counsel's rather passive approach alone might conceivably warrant the conclusion that plaintiff's grievance was asserted in so perfunctory a manner as to constitute a breach of the union's duty to represent him fairly. Cf. Vaca v. Sipes, supra at 191 (1967).

If a breach of the union's duty is established, there is little reason to treat the arbitrator's decision as precluding judicial assessment of plaintiff's wrongful discharge claim under 29 U.S.C. § 185. Although settlement of disputes on the job through contractual grievance procedures is perceived as so vital to the maintenance of stable industrial relations that a suit against the employer will not ordinarily be entertained absent the employee's prior attempt to exhaust informal grievance remedies prescribed by the collective bargaining agreement, see Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965), resort to the courts is permitted when the employee would be otherwise deprived of the possibility of securing relief from his employer's breach of the labor contract by his union's wrongful failure or refusal to press the

controversy to arbitration, see Vaca v. Sipes, supra at 184-186 (1967). In the latter situation, there is no policy bar to suit for breach of contract because the aggrieved employee's effort to pursue a meaningful extrajudicial remedy has been frustrated. The employee is similarly denied any effective recourse other than by suit if arbitration is rendered an empty formality by totally inadequate presentation of his grievance. Counsel for defendant Avco correctly points out that in the single reported opinion which has previously analyzed this precise issue, Margetta v. Pam Pam Corp., 354 F. Supp. 158 (N.D. Cal. 1973), the mere fact that the wrongful discharge grievance had been arbitrated was viewed as crucial, and the breach of contract claim against the employer was dismissed in the absence of allegations that "the employer itself . . . engaged in or acquiesced in an undermining of the arbitration process, or . . . even knew of the union's departure from its duty of fair representation", id. at 161. While it might here be said that defendant Avco "acquiesced in" union counsel's formulation of the issues before the arbitrator, there is no impropriety in the employer's pressing such an advantage, and no hint of collusion to weaken plaintiff's case. This Court, however, finds no justification for attributing those beneficial qualities to an arbitration award which have prompted the doctrine of narrow judicial review, see United Steelworkers of America v. Enterprise Wheel & Car Corp., supra, when in fact inadequate representation of

the employee prevented the arbitrator from arriving at that "expeditious and final, yet informed, resolution" of the employment contract dispute in which lies "the great value of the [arbitration] process", Margetta v. Pam Pam Corp., supra at 160. In short, proof of the union's breach of its duty of fair representation entitles an employee to be heard on his contract claim against the employer, cf. Vaca v. Sipes, supra at 186, whether the union's wrong consisted of barring access to arbitration outright or of acting so as to foreclose meaningful arbitration.

The Court must in any event probe plaintiff's further contention that the firing may not be upheld without violation of his First Amendment right to freedom of expression. While plaintiff has yet to adduce facts which might permit the conclusion urged that defendant Avco is so regulated by government in the purported discharge of a governmental function as a defense contractor that its personnel policies represent more than simply private action, the lack of constitutional inhibition against imposing limitations upon speech as a condition of retaining private employment does not mean that such privately created restrictions can be validly enforced in all circumstances. Absent the collective bargaining agreement's provision for arbitration, plaintiff could have brought suit under 29 U.S.C. § 185 in the first instance, and this Court could not have found "just cause" for discharge in total disregard of the First Amendment. Cf. Shelley v. Kraemer, 334

U.S. 1 (1948). That the matter went to arbitration instead makes little difference, for the arbitrator may not be realistically termed a merely private person. Arbitration is a chief "instrument of federal policy for resolving disputes between labor and management", Boys Market, Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235, 243 (1970). A vital judicial role has accordingly been delegated to the labor arbitrator; as previously mentioned, the merits of his awards are not typically subject to further review, see United Steelworkers of America v. Enterprise Wheel & Car Corp., supra, and he enjoys an immunity from suit equivalent to the judicial, see, e.g., Hill v. Aro Corp., 263 F. Supp. 324 (N.D. Ohio 1967). The label "private" simply does not accurately describe the significant responsibility borne by the arbitrator in furtherance of the collective bargaining process and as a virtual substitute for the courts in the usual case.

Indeed, the arbitrator may even have full power to determine fundamental civil rights issues presented by a contract grievance just like any ordinary question of fact or law arising from a disputed interpretation or application of a collective bargaining agreement. See Dewey v. Reynolds Metal Co., 429 F.2d 324, 332 (6 Cir. 1970), aff'd per curiam without opinion by an equally divided Court, 402 U. S. 689 (1971). Whatever the force of this last proposition, the Court is hardly prepared to conclude summarily that disposition of the pending action is of no constitutional moment. The

arbitrator properly inquired into the parties' claims concerning First Amendment implications of his finding "just cause" for dismissal through application of Rule 19, and the existing record does not compel a conclusion as a matter of law that plaintiff is bound by counsel's extraordinary decision not to press an obvious constitutional claim. Whether or not that concession suggests breach of the union's duty of fair representation, cf. Newman v. Avco Corp., 451 F.2d 743, 748 (6 Cir. 1971), the consequently inadequate development of the grievance in arbitration necessitates full judicial examination of the enforceability of Avco's disciplinary stance, cf. Rios v. Reynolds Metal Co., 467 F.2d 54, 58 (5 Cir. 1972). The end result is uncertain on this partial record. Plaintiff appears to maintain that an employee may not be disciplined unless his offending expressions amount to defamation subject to redress by a suit for damages under current First Amendment standards, cf., e.g., New York Times Co. v. Sullivan, 376 U.S. 254 (1964), but it is elementary that freedom of speech is a concept defined by circumstances, see Schenck v. United States, 249 U.S. 47 (1919), and immunity from damages may not be woodenly equated with the privilege of retaining a particular job in private industry. The countervailing interests of the parties in this context were not explored in arbitration, and the Court declines to speculate upon the outlines of an appropriate First Amendment

standard for the judicial or quasi-judicial enforcement of a plant conduct rule limiting critical speech by employees in the absence of a complete record of pertinent fact.

Judgment in favor of either plaintiff or defendant Avco on the evidence before the Court would rest in part upon inferences drawn from an inconclusive record, a fact-finding process which must be confined to the trial of a case. Cf. United States v. Diebold, Inc., 369 U.S. 654, 655 (1962). To the extent that defendant Avco's motion raises additional issues not discussed above but fully considered in the denial of an earlier motion to dismiss, e.g., the action's timeliness, see Holodnak v. Avco Corp., Civil No. B-15 (D. Conn. July 17, 1970), the Court adheres to its prior ruling.

In accordance with the foregoing, defendant William A...law's motion for summary judgment is hereby granted, and plaintiff's and defendant Avco's cross-motions for summary judgment are hereby denied.

Dated at New Haven, Connecticut, this 4th day of October 1973.

United States Magistrate

SO ORDERED

United States District Judge

PARTIAL JUDGMENT FOR WILLIAM ASHLAW DATED OCTOBER 11, 1973.

PARTIAL JUDGMENT

This case having come on for hearing on Defendant, William Ashlaw's motion for summary judgment, and the Plaintiff, Michael Kolodnak's and Defendant, Avco's cross motions for summary judgment, and the Court having rendered its Ruling on Pending Motions for Summary Judgment under date of October 4, 1973,

It is accordingly ORDERED, ADJUDGED and DECREED that the Defendant, William Ashlaw's motion for summary judgment is granted but that Plaintiff, Michael Kolodnak's and Defendant, Avco's cross-motions for summary judgment are denied.

Dated at Bridgeport, Connecticut, this eleventh day of October 1973.

SYLVESTER A. MARKOWSKI
Clerk

By Vincent P. LaRosa
Deputy-in-Charge

DECISION OF THE HONORABLE J. EDWARD LUMBARD SITTING BY DESIGNATION.

LUMBARD, Circuit Judge:*

Michael Holodnak brings this action against Avco-Lycoming Division of Avco Corporation and Local 1010 of the United Auto Workers of America, challenging his dismissal on May 28, 1969 for publishing an article critical of company and union practices. He claims $79,569.88 in damages with interest and counsel fees of $50,000.

In his first cause of action, Holodnak argues that the award of arbitrator Burton Turkus, upholding his discharge, should be vacated under § 10 of the Federal Arbitration Act, 9 U.S.C. § 10, because of the "evident partiality" of the arbitrator and because the arbitrator exceeded his power, principally by making an award in disregard of Holodnak's First Amendment rights.[1/] In his second cause of action, Holodnak maintains that his discharge violated his contractual rights under the collective bargaining agreement, and he should therefore be reinstated and fully compensated for losses suffered, pursuant to § 301 of the Labor Management Relations Act (LMRA), 29 U.S.C. § 185. In his final cause of action, Holodnak asserts that Local 1010 breached its duty of fair representation, thereby entitling him to reinstatement and monetary damages, also under § 301 of the LMRA.[2/]

*Sitting by designation.

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Holodnak's allegations were substantially denied by both defendants, who also raised three special defenses: that the plaintiff had failed to state a claim upon which relief could be granted; that the suit was barred by the statute of limitations; and that, under the contract between Avco and Local 1010, the arbitrator's conclusion that there was "just cause" for Holodnak's discharge was final and binding.

On July 17, 1970 Judge Zampano denied motions by the defendants Avco and Local 1010 to dismiss. After discovery and a pre-trial conference, cross motions for summary judgment by the plaintiff and the defendant Avco were heard by Magistrate Latimer who recommended denial, which was so ordered by Judge Zampano. A two-day trial without a jury then commenced before this court on April 29, 1974.

I.

On May 28, 1969, at approximately 9:30 a.m., Holodnak, received a written notice that he was to report to Avco's labor relations office for a "disciplinary hearing." At 10 a.m., accompanied by his shop steward, Frank Guida, and committeeman Joe Mezick, Holodnak entered the labor relations office, where several management officials were present. William Ashlaw, a company representative showed Holodnak a copy of an article written by the plaintiff and published in the AIM

oriented candidates, ... to making it miserable for and sometimes firing the really dedicated unionists, and last but not least, buying off whatever other effective opposition may be left with a foremanship." Turning then to the tactics which the workers might employ, the plaintiff noted that it is "probably true that wildcat strikes are not the answer, but wildcats wouldn't even be tempting if we had a good solid union that knows where it's at and that does not, through the grievance procedure, compromise away our rights. Yet it is comforting to have wildcats in our arsenal of weapons, just in case."

The process for resolving grievances came under particular attack. Holodnak wrote that "the company gets away with its devious and unfair labor practices because the company is above the law, (even the more naive realize this) and the biased judges and arbitrators, for all practical purposes, belong to the company. The most recent example was the firing of the twenty-two so-called 'hard core/miscreants.' From his Heavenly perch the 'impartial' Arbitrator, backing up the company, pronounced his God-like opinion upon us poor sinful mortals while praising the pure-as-the-snow 'patient company' to the high heavens."

Holodnak concluded by emphasizing "that nothing has ever been accomplished by so-called 'reasonable people'....

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The labor movement itself would have never been born if the workers had been 'reasonable.'"

Ashlaw asked Holodnak whether he subscribed to the views expressed in the article and Holodnak said he did. Ashlaw then questioned a company security officer about the American Independent Movement and asked whether it was on the Attorney General's subversive list. The security officer answered that it was not. At the end of the meeting, despite a request by committeeman Joe Mezick to have a lesser charge carrying a reduced penalty brought against Holodnak, Ashlaw asked for Holodnak's badge and informed him that he was discharged. Holodnak had worked at the Avco plant for nine years, first as a tool-and-die maker and then as a small-parts inspector.

Following his discharge, the plaintiff contacted George Johnson, an attorney for AIM. It was agreed that Holodnak should permit the union to pursue the normal three-stage grievance procedure and then, if necessary, resort to arbitration. The grievance procedure proved unsuccessful and an arbitration hearing at the union's request was scheduled. Prior to this hearing, Holodnak asked that Edward Burstein, the attorney for Local 1010, represent him. Although union

members were usually represented by a committeeman at arbitration proceedings, the union attorney did so from time to time. On July 8, 1969, Johnson, the AIM attorney who was advising Holodnak, spoke with Burstein on the phone and offered his assistance. Burstein expressed his pleasure at Johnson's offer, but never communicated with him again.

On July 17, 1969, the arbitration was held before arbitrator Burton Turkus at the Howard Johnson Motor Inn in West Haven, Connecticut. Here Burstein met the plaintiff for the first time. In the course of their ten or fifteen minute meeting, Burstein read the controversial article for the first time.

When the arbitration began, Burstein asked to be informed which rule Holodnak had been accused of violating.[5/] After being informed, Burstein indicated Holodnak's right of free speech was at stake. But later when the arbitrator asked whether Holodnak would be attacking Plant Conduct Rule 19 on First Amendment grounds, Burstein agreed that rule 19 was a "fair and reasonable rule, regulation, policy requirement" and that the rule did not infringe on "the exercise of free speech."[6/]

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As the arbitration proceeded, the company representative, along with arbitrator Turkus, inquired into the plaintiff's political and social views as well as his personal background. He was asked about the books he read, the candidates he supported for political office, and his views on "corporatism." Most striking was the extent to which the arbitrator participated in this irrelevant and, at times, offensive questioning. Thus, at one point he asked Holodnak whether he had travelled to Cuba in 1960 and had written articles based on his experiences and his views of the "Castro system." He questioned Holodnak repeatedly about his motives for writing the article which had led to his discharge.

Emphasis throughout the proceeding seemed to be on instructing Holodnak on the mistake of his ways. At one point the arbitrator told him, referring to Holodnak's comments suggesting that the union was not doing all that it might, "[N]ow you know differently, don't you." At another point, the arbitrator instructed him:

> "Well, don't you know, as a fact, when you wrote the article, that you have here a very militant and zealous union that seeks the protection of the rights of its membership and seeks to endorse (sic) all Company obligations under the contract. Didn't you know that when you wrote the article?"

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Throughout this line of questioning the union attorney made no objection. Indeed, the record of the arbitration reveals only the most half-hearted efforts on his part to object to the irrelevant and improper statements made by the arbitrator and the counsel for Avco.

Testimony at the trial revealed that Holodnak's article was less vituperative and critical of company and union practices than numerous other articles and leaflets, many of which had been distributed at the plant by the union. These leaflets included descriptions of company officials as "the Mickey Mouse managers of Stratford's Disneyland" with "a superb talent for being both inconsistent and incompetent." The supervision at the plant is described in one circular as "the political cesspool of mahogany row" that "has no regard for human dignity." General foremen are depicted as "brainless' and the grievance proceedings as a "weekly farce." Two union officials who testified at trial, Frank Guida and Joe Mezick, made clear that Holodnak's article was not nearly as harsh in its criticisms as much of the material circulated among workers at the plant.

After the conclusion of the arbitration hearing, the parties submitted post-arbitration briefs. The brief submitted

by attorney Burstein on behalf of Holodnak was harsh in its characterization of Holodnak. Holodnak was described as "politically conscious to an inordinate degree." It stated that: "It is said, 'A little knowledge is a dangerous thing', and so it is with Michael Holodnak--that which he knows is but a scintilla of what he doesn't know! " Then Burstein repudiated much of Holodnak's testimony at the arbitration: "Testimony throughout is replete with examples of this man's superficial knowledge, which because it was gleaned informally, if oftimes wrong and even childlike in its naivete." Burstein "respectfully submitted that grievant really knew not what he was doing ... and that the arbitrator should consider this in making his decision as to whether the termination was proper and just." Burstein then argued only briefly that there was no evidence that Holodnak's comments had been false, vicious, or malicious and that the company had waived any right to discharge an employee for violation of rule 19.

Pursuant to Article V, § 1.a. of the collective bargaining agreement then in force, which gave Avco the right to discharge for "just cause," arbitrator Turkus, on December 18, 1969, rendered a one-sentence award which stated that the proof "establishes the just cause for the discharge

... with conclusive finality." Article IV, § 1.b. of the collective bargaining agreement further provided that the "decision of the Arbitrator shall be final and binding."

At the time of the plaintiff's discharge, the Avco plant in Stratford was owned by the government, as was virtually all the machinery and the land upon which it was located. Military personnel were present at all times to guarantee quality control of the plant's output. Eighty percent of the production of the plant was in the form of military hardware: nose cones for missiles, helicopter engines, and constant speed drives for fighter planes. The plant in Stratford as well as one in South Carolina is part of the Avco-Lycoming Division of the Avco Corporation, a widely diversified conglomerate.

II.

Following the award of the arbitrator, Holodnak commenced this action by the filing of a complaint in the district court on February 16, 1970. The complaint, however, was not served forthwith, largely due to an overload of business in the United States Marshal's office. When notified that a marshal would not be available to serve the process immediately, the plaintiff moved to allow service by

an indifferent person. This motion was granted on February 18, 1970, and service was effected on Monday, February 23, 1970, three months and one day after the filing of the arbitration award.

Section 12 of the Arbitration Act, 9 U.S.C. § 12, provides that:

> "Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered."

On the basis of this statute, the defendants argue that the plaintiff's action to have the arbitrator's award vacated is time barred by the statute of limitations since service of process was effectuated one day late. Both Judge Zampano, in his denial of defendants' motion to dismiss, and Magistrate Latimer, in his denial of defendant Avco's motion for summary judgment, rejected this argument, emphasizing the due diligence of the plaintiff in securing a substitute means to perfect service within the time limit and the absence of any prejudice suffered by the defendants as a result of the one day delay. The court agrees that the circumstances of the service do not represent a bar to this action. See American Guaranty Co. v Caldwell, 72 F.2d 209, 212 (9th Cir. 1934). Moreover, under the Federal Rules of Civil Procedure, Rule 6(a), when the last day of the limitations period falls as was the case here, on a Sunday, the period is extended until the end of the

following day. While the Arbitration Act contains no such provision, the policy of liberality embodied in Fed.R.Civ.P. 6(a) should be applied by analogy. See Union National Bank v Lamb, 337 U.S. 38 (1949); Wirtz v Local Union 611, 229 F.Supp. 230 (D.Conn. 1964); Rutledge v Sinclair Refining Co., 13 F.R.D. 477 (S.D.N.Y. 1953).

III.

The next question is whether the arbitrator's award, "final and binding" under the collective bargaining agreement, may be vacated by this court.[7/]

In his first cause of action, Holodnak seeks to vacate the arbitrator's award pursuant to 9 U.S.C. § 10. One of the grounds urged for setting aside the award is the arbitrator's "evident partiality." It is settled that upon judicial review of an arbitrator's award, "the court's function in ... vacating an arbitration award is severely limited," Amicizia Societa Navegazione v Chilean Nitrate & Iodine Sales Corp., 274 F.2d 805, 808 (2d Cir.), cert. denied, 363 U.S. 843 (1960), and is confined to determining whether one of the grounds for vacation specified in 9 U.S.C. § 10 is available, Office of Supply, Republic of Korea v New York Navigation Co., 469 F.2d 377 (2d Cir. 1972). One such ground is the arbitrator's partiality.

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"[W]hen a claim of partiality is made, the court is under an obligation to scan the record to see if it demonstrates 'evident partiality' on the part of the arbitrators." Saxis Steamship Co. v Multifacs International Traders, Inc., 375 F.2d 577, 582 (2d Cir. 1967); Ballantine Books, Inc. v Capital Distributing Co., 302 F.2d 17 (2d Cir. 1962). The transcript of the arbitration here discloses substantial evidence of partiality on the part of the arbitrator, if not open hostility toward the plaintiff. Throughout the proceeding the arbitrator permitted inquiries to be made into the books Holodnak read, his political views, and his personal background. The arbitrator himself participated in questioning the plaintiff about a trip to Cuba in 1960 and his views on Castroism. Repeatedly, he showed an undue concern for the plaintiff's motives in writing the article published in the AIM Newsletter and what Holodnak was trying to "signal" to his readers. Indeed, at times the arbitrator openly badgered the plaintiff, as when he persistently questioned Holodnak about his statement that "reasonableness" on the part of workers in pressing their demands might not be the best way to achieve their goals. This line of questioning culminated with an exchange:

(Arbitrator): Well, it was the general tenor and purport of the article to indicate that the Union officials of this Union were supine and were not doing the job that they were supposed to do. Isn't that the whole purpose of your article?

(Holodnak): Well, at that time I thought that was true, that they weren't quite doing the job.

(Arbitrator): But now you know differently, don't you?

Later the arbitrator took issue with Holodnak's view that the union should be more aggressive in handling grievances:

(Arbitrator): Well, don't you know, as a fact, when you wrote this article, that you have here a very militant and zealous union that seeks the protection of rights of its membership and seeks to endorse (sic) all Company obligations under the contract? Didn't you know that when you wrote the article?

(Holodnak): Well, I didn't say that they didn't enforce it. I'm pointing out the shortcoming here. I know there are some good things they do, a lot of good things.

(Arbitrator): Well, certainly when you wrote this article, you knew that there was no shortcoming, that this was not a supine Union that sat by and allowed the Company to do whatever it wanted; you knew that when you wrote it."

The arbitrator seemed compelled to convince Holodnak that he was wrong in criticizing the grievance system to

which the arbitrator himself had been appointed as the permanent umpire.

The clear bias revealed by the arbitrator's comments throughout the arbitration proceeding requires that the award be vacated. 9 U.S.C. § 10.

IV.

Because the plaintiff seeks not only vacation of the arbitrator's award, but also reinstatement and damages, his claims under § 301 of the LMRA, 29 U.S.C. § 185, must be considered. Section 301 provides for private suits for violation of collective bargaining agreements. The right to bring suit is not restricted to the representative union, but may be exercised by an employee in his own behalf. Smith v. Evening News Association, 371 U.S. 195, 200-201 (1962). Here there is no problem of a failure to exhaust grievance and arbitration procedures, since Holodnak has pursued fully the recourse provided in the collective bargaining agreement. Such procedures having been exhausted, the plaintiff may properly seek relief for breach of contract under the collective bargaining agreement pursuant to § 301 of the LMRA. See Republic Steel Corp. v. Maddox, 379 U.S. 680 (1965).

Ordinarily, an employee may not challenge in the courts the decision of an arbitrator where based on an

interpretation of the collective bargaining agreement following a fair hearing of his grievance. United Steel Workers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 598-99 (1960). However, where the union has failed to provide him with fair representation in the course of the grievance or arbitration process, the arbitrator's award is not binding on the employee and he may maintain an action under § 301 of the LMRA against the employer and the union. Vaca v. Sipes, 386 U.S. 171, 184-86 (1967). The reason is that the employee's grievance can hardly have been given due consideration by the arbitrator when it was not fairly presented by his representative union.[8/] Id. at 185. Here there can be little question that Holodnak was not fairly represented at the arbitration by his union's attorney, Edward Burstein.

In Vaca v. Sipes, Mr. Justice White said, "A breach of the statutory duty of fair representation occurs when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." 386 U.S. at 190. It is clear that the union's representation of Holodnak constitutes a breach of the duty of fair representation. The harsh and unfair description of Holodnak contained in Burstein's brief is at best a misguided attempt

to plead for mercy from the arbitrator, cf. Bazarte v. United Transportation Union, 429 F.2d 868 (3d Cir. 1970), and is at worst an indication of the union's bad faith. This need not be decided since the union breached its duty of fair representation because of the perfunctory manner in which the union handled the arbitration. See Vaca, supra, 386 U.S. at 191.

Although the Second Circuit has not yet passed upon the point, see, e.g., Pyzynski v. New York Cent. R.R., 421 F.2d 854 (2d Cir. 1970), other courts of appeals have held that arbitrary conduct in handling a meritorious grievance in a perfunctory manner is a breach of the duty of fair representation.[9/] See Griffin v. UAW, supra, 469 F.2d at 182-83; Retana v. Elevator Operators, supra, 453 F.2d at 1024 n. 10; De Arroyo v. Sindicato de Trabajadores Packinghouse, supra, 425 F.2d at 283-84. See generally Clark, supra note 9. There is little doubt that Burstein represented Holodnak in a perfunctory manner. Although he recognized that important free speech rights were involved, he conceded, probably because of inadequate preparation, that rule 19, which is certainly vague and easily susceptible to an overbroad interpretation, was reasonable. Although the collective

bargaining agreement did give the company the right to promulgate rules of conduct, Burstein should have argued that the parties to the agreement did not intend to allow dismissal for conduct such as Holodnak's.[10/] Burstein should have emphasized the important free speech considerations and demanded that rule 19 be strictly construed so that it was at least limited to situations in which the false, vicious or malicious statements concerned any particular employee or situations in which the statements were proved to have affected the employee's relationship to his job or the company's reputation in the community. Finally, Burstein made no effort to distinguish what might be considered to be factual statements in Holodnak's article from statements of opinion and rhetorical hyperbole. Indicative of this passive approach by Burstein is the minimal effort on his part to object when the arbitration proceeding became an inquisition into Holodnak's beliefs.

The union was not faced with the task of balancing the interests of one set of employees it represents with another. Holodnak's right was the right of all its members to express their views on labor-management relations. Under these circumstances, the court must hold that the union's representation of Holodnak was sadly lacking and was arbitrary.

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V.

Even though the union failed in its duty to provide fair representation, the question remains whether Holodnak has a meritorious claim under § 301 of the LMRA.

The crux of Holodnak's § 301 claim is that his discharge by Avco was in breach of Article V, Section 1 of the Collective Bargaining Agreement of April 16, 1967 between the company and the union, which provided that "The Company shall have the right to discharge or discipline employees for just cause." Holodnak maintains that his discharge was not for "just cause" since it was due to his exercising of his First Amendment rights by authorship of the article published in the AIM Newsletter.

In determining whether Holodnak was fired without "just cause" this court must take due account of Holodnak's First Amendment rights. See Shelly v. Kraemer, 334 U.S. 1 (1948). There is no doubt that Holodnak was discharged because of what he wrote in the article. If Holodnak's dismissal infringed his First Amendment rights, the court must hold his discharge was without "just cause" and Avco breached the collective bargaining agreement.

The First Amendment is a protection against governmental infringement of speech. There is no First Amendment

protection, however, from infringement by a private employer. NLRB v. Edward G. Budd Mfg. Co., 169 F.2d 571, 577 (6th Cir. 1948), cert. denied, 335 U.S. 908 (1949); cf. Buckley v. American Fed. of Television & Radio Artists, 496 F.2d 305 (2d Cir. 1974).

The parties here have disputed whether the links between Avco and the federal government are so substantial as to provide the requisite degree of governmental action to enable Holodnak to challenge his discharge on First Amendment grounds. The evidence adduced at trial reveals that Avco is a major defense contractor. Beverly Warren, Avco vice president and chief operating officer at the Stratford plant, testified that approximately 80% of the work done at the plant at the time of the plaintiff's discharge was defense-related and primarily directed toward producing aircraft engines, missile nose cones, and constant speed drives for the military. Nearly all the land, buildings, machinery, and equipment at the Stratford plant were owned by the government. The Department of Defense maintained a large task force at the plant to oversee operations, assure contract compliance and guarantee quality control.

The question of how much government involvement constitutes "state action" does not lend itself to a simple

answer. Rather, as the Supreme Court emphasized in Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961), the task is one of "sifting facts and weighing circumstances," id. at 722, a procedure, which as Judge Friendly has recently noted, "has survived much better than attempts at more definitive formulations." Wahba v. New York University, 492 F.2d 96, 101-02 (2d Cir. 1974).

In the Burton case, a restaurant located in an automobile parking building had refused to serve a customer because of his race. The building in which the restaurant was located was owned by the State of Delaware with the restaurant as a lessee. Reversing the Supreme Court of Delaware and holding that there was "state action," the Supreme Court emphasized that the land and building were publicly owned, the cost of land acquisitions, construction, and maintenance had been defrayed by public funds, and the restaurant was an "indispensable part of the State's plan to operate its project as a self-sustaining unit," / 365 U.S. at 723-24. Many of these same factors are present here. Not only were the land, buildings, and equipment all owned by the government, but the production at the plant was almost entirely for the military.

Wahba v. New York University, supra, on which Avco relies is clearly distinguishable on its facts. As the court

of appeals stressed, "decisions dealing with one form of state involvement and particular provisions of the Bill of Rights are not at all determinative in passing upon claims concerning different forms of government involvement and other constitutional guarantees." 492 F.2d at 100.

Here we are concerned with substantial governmental involvement at Avco's Stratford plant. The fact that Avco-Lycoming Division also operated a second plant in South Carolina engaged in other production and is part of a far-flung conglomerate does not alter the conclusion that there is governmental action. The right here involves the basic right of freedom of speech and press and the firing of Holodnak for expressing his views is "offensive." See Wahba, supra, 492 F.2d at 102. For present purposes, the court concludes that there was sufficient governmental action for the First Amendment to apply.

In light of this governmental presence, the plaintiff's discharge for writing an article must be analyzed to determine if First Amendment rights have been infringed. The First Amendment does not guarantee an absolute right of free speech. Concerning discharges of public employees, the Supreme Court has held that the interest of the employee in

free speech must be balanced against the employer's interest in job efficiency. Pickering v. Board of Education, 391 U.S. 563, 568 (1968). See also Linn v. Plant Guards, Local 114, 383 U.S. 53 (1963).

Both the company and the union claim that precedents have already resolved this balance adversely to Holodnak. The company places particular emphasis on the Supreme Court's decision in Arnett v. Kennedy, 42 U.S.L.W. 4513 (April 16, 1974). While in Arnett the court upheld the discharge of a civil service employee pursuant to a statute authorizing discharges of civil servants for "such cause as will promote the efficiency of the service," 5 U.S.C. § 7501 (1970), it made clear that it was only deciding that the statute was not overbroad on its face. Noting that the statute did not reach "constitutionally protected speech," the plurality opinion by Mr. Justice Rehnquist placed particular emphasis on the fact that the discharged employee had not been discharged for protected speech, but for making recklessly false and defamatory statements that another civil servant, whom he had named, had taken a bribe.

The union relies on cases upholding discharges of teachers who made statements which were potentially disruptive

of classroom activities. See, e.g., Birdwell v. Hazelwood School District, 352 F.Supp. 613 (E.D.Mo. 1972), aff'd, 491 F.2d 490 (8th Cir. 1974).

The situation here is markedly different from both Arnett and Birdwell. Unlike Arnett Holodnak never accused anyone of illegal activity and has not identified those individuals who, he believed, had not acted in the best interests of the workers. Indeed throughout the grievance and arbitration proceedings Holodnak has evidenced great reluctance to disclose the identities of those he had in mind in writing the article. In no way can Holodnak's comments, constitutionally speaking, be said to be of and concerning any particular individual. New York Times Co. v. Sullivan, 376 U.S. 254, 288-92 (1964).

Unlike Birdwell, relied on by the union, we do not have here potentially disruptive speech in the refined atmosphere of a classroom but rather speech in the rough-and-tumble of labor relations. The record in this indicates that Holodnak's article was no more harsh in its descriptions of management than the union's own leaflets. See generally Linn v. Plant Guards, Local 114, supra, 383 U.S. at 58. From this record, the court concludes that use of vituperatives alone, such as at issue here, could not have interfered with production at Avco.

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Since the cases cited by defendants are not in point the court must balance the competing interests as suggested in Pickering. Read fairly, Holodnak's article is an analysis of why unions lose their militancy. It is largely composed of Holodnak's opinions concerning labor-management relations at Avco and as such is a matter of employee interest clearly protected.[11/] Furthermore, many of the statements in the article that could be read as statements of facts are more reasonably read as rhetorical hyperbole, and as such are constitutionally protected. Greenbelt Cooperative Publishing Assn. v. Bresler, 398 U.S. 6, 11-14 (1970); cf. Watts v. United States, 394 U.S. 705 (1969). Finally, as noted above, none of the statements concerned any particular person. Thus it must be concluded that Holodnak's article was constitutionally protected regardless of the truth or falsity of the few statements of facts in it. See generally Gertz v. Robert Welch, Inc., supra; New York Times Co. v. Sullivan, supra.

Against Holodnak's interest in having his say, Avco's interest in maintaining efficiency in production is insufficient. As noted above, vituperative articles such as Holodnak's were quite common at Avco and evidently they have

not interfered with production. Avco strongly argues that Holodnak's article favored wildcat strikes, which were a problem at Stratford. But the article in fact questions the effectiveness of such strikes and does not advocate them. While Holodnak's belief, expressed at the arbitration hearing, that workers had a constitutional right to engage in a wildcat strike was mistaken, see Boys Markets, Inc. v. Retail Clerks, Local 770, 398 U.S. 235 (1970), his article falls far short of being "incitement to imminent lawless action." Brandenburg v. Ohio, 395 U.S. 444, 449 (1969).

The balance, therefore, clearly tips in favor of Holodnak's right to free speech. It is noteworthy that even in private enterprise where the guarantees of the First Amendment do not apply, federal statutes have given employees the right to speak their minds on labor relations. Section 7 of the National Labor Relations Act, 29 U.S.C. § 157, gives employees the "right to self-organize, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection ...." Interference with these rights by an employer is an unfair labor practice.

29 U.S.C. § 158(a)(1). Only recently in NLRB v. Magnavox Co., supra, 42 U.S.L.W. 4300, the Supreme Court upheld a finding of an unfair labor practice where a company rule forbade the distribution of pro- and anti-union literature within the plant, even though the collective bargaining agreement authorized the rule. See also Republic Aviation Corp. v. NLRB, 324 U.S. 793 (1945). Of course, the question of whether Holodnak's discharge is an unfair labor practice is not for a district court to decide. See notes 9&10, supra. But Magnavox by analogy supports the conclusion that the First Amendment can allow no greater restrictions by a public employer on the right of employees to write articles which are circulated outside the plant and which in no way interfere with production.

Moreover, Congress has shown its interest in ensuring the right of employees to speak out on matters of union representation in § 101(a)(2) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 411(a)(2), which provides: "Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments or opinions ...."

While this statute is principally concerned with preserving the right of the worker to speak out on union

matters without being punished by the union, it clearly evidences a concern by Congress that the worker should be free to speak his mind on the important question of the quality of representation he is receiving. This is precisely what Holodnak sought to do. Cf. Cole v. Hall, 462 F.2d 277 (2d Cir. 1972), aff'd, 412 U.S. 1 (1973).

In light of the foregoing, the court must conclude that Avco's dismissal of Holodnak infringed on his First Amendment rights and that Holodnak was not discharged for "just cause" as required by Article V, § 1.a. of the collective bargaining agreement.[12/]

In conclusion, we would do well to remember what the Supreme Court said 34 years ago in Thornhill v. Alabama, 310 U.S. 88,103 (1940): "Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society."

VI.

Attached to plaintiff's post-trial memorandum is a revised financial loss statement. In addition to seeking reinstatement, plaintiff claims $49,569.88 in back wages. The plaintiff also seeks $30,000 in punitive damages for

wilful discharge. Finally, $50,000 in attorney fees are requested.

Holodnak is entitled to $9,113.24 in back pay. At trial, he was unable to offer any evidence that he had sought equivalent employment during the last four years. He frankly conceded that he had not looked for employment, although he was a skilled laborer, and had relied to some extent on a disability pension. Only during the first year after being discharged did he make any effort to obtain other employment. Holodnak was under a duty to mitigate damages. Schneider v. Electric Auto-Lite Co., 456 F.2d 366, 373 (6th Cir. 1972); De Arroyo v. Sindicato de Trabajadores Packinghouse, supra, 425 F.2d at 292; cf. N.L.R.B. v. Mastro Plastics Corp., 354 F.2d 170, 178 (2d Cir. 1965), cert. denied, 384 U.S. 972 (1966). Accordingly, damages for back pay are awarded only to the extent of $9,113.24. This figure is comprised of $7,012.40 for normal hours worked and $2,101.84 for overtime from May 29, 1969 to April 14, 1970 as a small parts inspector A. The union was on strike for the remainder of the year following discharge. Interest is awarded on this amount at a rate of 6% from the date of judgment. No pre-judgment interest is awarded. Lodge 743 v. United Aircraft Corp., 336 F.Supp. 811, 815 (D.Conn. 1971).

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As to the apportionment of damages between Avco and Local 1010, Vaca v. Sipes, supra, makes clear that damages should be apportioned according to fault. "[D]amages attributable solely to the employer's breach of contract should not be charged to the union." 386 U.S. at 197. See also De Arroyo v. Sindicato de Trabajadores Packinghouse, supra; Richardson v. Communications Workers, 443 F.2d 974 (8th Cir. 1971). Since essentially all the loss suffered here was due to Avco's improper discharge of the plaintiff, it must be held liable for plaintiff's back pay and interest thereon.

Holodnak also seeks $30,000 in punitive damages. Whether such damages are recoverable under LMRA § 301 is still an open question. A closely divided Third Circuit has held that punitive damages are not available under § 301 and the Ninth Circuit apparently agrees. Local 127, Shoe Workers v. Brooks Shoe Manufacturing Co., 298 F.2d 277 (3d Cir. 1962) (en banc); Williams v. Pacific Maritime Assn., 421 F.2d 1287 (9th Cir. 1970). Two district courts, however, have said that punitive damages may be available under § 301. Zamora v. Massey-Ferguson, Inc., 336 F.Supp. 588 (S.D. Iowa 1972); Patrick v. I.D. Packing Co., 308 F.Supp. 821 (S.D. Iowa 1969); Sidney Wanzer & Sons, Inc. v. Milk Drivers, Local 753, 249

F.Supp. 664 (N.D. Ill. 1966). In the context of other statutory provisions, the Supreme Court has held that the NLRB does not have the power to impose punitive damages, Republic Steel Corp. v. NLRB, 311 U.S. 7 (1940), and that punitive damages are not available under LMRA § 303(b), 29 U.S.C. § 187(b), which allows a person injured by unlawful secondary boycotts to recover the "damages by him sustained and the costs of the suit," Local 20, Teamsters v. Morton, 377 U.S. 252 (1964).

The determination of whether punitive damages are available is, of course, a question of federal law. Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957). The language of § 301, which only gives the district courts jurisdiction over suits for violation of collective bargaining agreements, does not provide the answer. Two justifications have been given for allowing punitive damages. One is that such damages may be awarded in special instances to further the policy of federal labor laws when other remedies may be lacking. Sidney Wanzer & Sons, supra, 249 F.Supp. at 668-71. The other is that while punitive damages are not normally available in contract actions, they are when an independent right apart from plaintiff's contractual rights has been infringed.

Local 127, Shoe Workers v. Brooks Shoe, supra, 298 F.2d at 282-83 (Staley, J., dissenting on this point).

The justification given in Wanzer is doubtful given the sweeping rejection of a deterrence as a rationale for penalties in Republic Steel Corp. v. NLRB, supra, 311 U.S. at 12, even though Wanzer attempted to distinguish that case. This matter need not be decided here since there is no evidence that punitive damages are necessary to deter future violations by Avco.

The rationale of the Brooks Shoe dissent is more in point and is more persuasive. Generally in contract cases punitive damages are available when the defendant's actions might also be tortious. See 5 A. Corbin, Contracts § 1077 (1964). There is no reason to believe that the district courts cannot apply general contract principles in § 301 actions where such principles are consistent with federal labor law policies. See Textile Workers v. Lincoln Mills, supra, 353 U.S. at 457. Unlike the NLRB, with which the Supreme Court was concerned in Republic Steel, the federal courts are not administrative agencies with limited expertise but are forums that often balance a wide range of concerns in rendering decisions.

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Here Avco acted in a manner that interfered with Holodnak's rights under the First Amendment and the federal labor laws. As noted above, no substantial explanation for the discharge can be given. Avco's actions must be either viewed as an irrational reaction to the article or as a calculated attempt to remove an employee who was considered to be a trouble maker. In either event, such wilful behavior, contrary as it is to the policies of the Constitution and federal law, cannot be tolerated. Punitive damages are damages available in civil rights actions for gross disregard of rights. See, e.g., Lee v. Southern Home Sites Corp., 429 F.2d 290, 294 (5th Cir. 1970); Chubbs v. City of New York, 324 F.Supp. 1183, 1191 (E.D.N.Y. 1971); Stamps v. Detroit Edison Corp., 364 F.Supp. 87, 119, 124 (E.D. Mich. 1973); Since Avco has acted wilfully in a manner that violated Holodnak's constitutional and statutory rights, the court holds that punitive damages are available and that the award to Holodnak of $10,000 in such damages from Avco is appropriate.

Plaintiff also seeks reinstatement at his former job at Avco. While reinstatement is a proper remedy in some circumstances, see De Arroyo v. Sindicato de Trabajordes Packinghouse, supra, 425 F.2d at 292, the court does not feel

that this remedy is appropriate here. Holodnak's failure to seek work for several years casts doubt upon his contention that he is willing in good faith to return to work. Moreover, Holodnak's physical condition, observed at trial, makes it doubtful that he is physically capable of returning to doing the work he had been doing. In short, in the absence of any showing that Holodnak is now capable of doing the work he had been doing, in light of his failure to attempt to secure employment, there is no basis for ordering his reinstatement.

As for plaintiff's request for counsel fees, this is generally a matter reserved to the discretion of the court. De Arroyo v. Sindicato de Travajadores Packinghouse, supra, 425 F.2d at 292-93 (1st Cir. 1970); Local 4076, United Steelworkers of America, AFL-CIO, 338 F.Supp. 1154 (W.D. Pa. 1972). The court has power to award counsel fees despite the absence of express statutory authorization. Cf. Cole v. Hall, supra. As in Cole, which was a suit brought under the Labor-Management Reporting and Disclosure Act, the rights vindicated here as a result of Holodnak's action will be of great benefit to all employees at the Avco plant. Benefits such as those achieved here "would be lost in most instances without the discretionary authority in courts to grant counsel fees,"

since individual employees generally lack the resources to take on the company or the union. 462 F.2d at 780. The alleged wrong inflicted on the employee, the loss of employment in violation of contractual rights; the anticipated recovery, perhaps too insubstantial to sustain competent counsel's best efforts, and the ultimate purpose of making the employee whole, all suggest that the employee should retain his lost earnings for himself. Vaca v. Sipes, 386 U.S. at 210 (Mr. Justice Black dissenting); De Arroyo v. Sindicato de Trabajadores Packinghouse, supra.

While violation of Holodnak's rights was caused primarily by Avco's actions, it cannot be said that the union's breach of its duty of fair representation did not contribute to Holodnak's need for counsel to assert his rights. On all the circumstances of the case, a fair apportionment of the liability for counsel fees and expenses is that Avco pay two-thirds and the union one-third.

The amount of counsel fees which should be awarded is a matter which the court is unable at present to determine. Counsel for plaintiff is directed to offer detailed proof of the extent of time devoted in preparation and trial of this case and the expenses incurred by all attorneys for whose

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services compensation is sought, within fifteen days of the filing of this opinion. Avco and the union may file objections thereto ten days after receipt of a copy thereof.

Accordingly, it is ordered that Avco compensate the plaintiff $9,113.24 in back pay plus $10,000 in punitive damages with interest at 6% from the date of judgment. Additionally, Avco and the union are to pay the plaintiff's attorney fees in an amount to be determined.

The foregoing constitutes the court's findings of fact and conclusions of law as required by Rule 52, Federal Rules of Civil Procedure.

J. EDWARD LUMBARD

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Footnotes

1/ Holodnak also argues that the arbitrator exceeded his powers since the maximum allowable penalty for violation of the plant conduct rule which the plaintiff was accused of violating is a written warning. The plaintiff is mistaken in this as the plant conduct rules specifically provide for discharge. See p. 3 infra.

2/ Courts of appeals, however, have made it clear that a suit against a union for breach of the duty of fair representation is not an action under § 301; rather, it is a breach of a duty implied from the grant to the union of exclusive power to represent employees of the collective bargaining unit in § 9(a) of the National Labor Relations Act, 29 U.S.C. § 159(a). Jurisdiction is under 28 U.S.C. § 1337. See Retana v. Apartment, Motel, Hotel, & Elevator Operators, Local 14, 453 F.2d 1018, 1021-22 (9th Cir. 1972); De Arroyo v. Sindicato de Trabajadores Packinghouse, 425 F.2d 281, 283 n. 1 (1st Cir.), cert. denied, 400 U.S. 877 (1970).

3/ Holodnak did testify at the arbitration that he showed a copy of the article to a few employees at the plant.

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4/ The plant conduct rules were incorporated by reference into the collective bargaining agreement, which allowed Avco to promulgate rules of conduct. Article XVI, § 4.

5/ At the arbitration, plaintiff indicated that he was satisfied to have Edward Burstein representing him and that he had discussed his grievance with Burstein. At trial, Holodnak indicated that he did not realize at the time the degree to which Burstein inadequately represented him. There is no reason to consider his comments at the arbitration in any way binding.

6/ Both the Company and the union claim that Burstein's statements are inadmissible because of Conn. Gen. Stat. § 52-172, which allows the declarations of a deceased to be admitted in actions by or against the estate of the deceased. Since Burstein has since died and his estate is not a party to this action, it is claimed that his statements are not admissible in any other proceeding. Section 52-172, however, was intended to do away with the rule that a party was disqualified to testify in an action against the deceased's estate. See generally, C. McCormick, Evidence § 65 (2d ed. 1972). This section, recommended by the ABA in 1938 as a

model, id. at 144 n. 32, certainly was not intended to bar testimony where there had been no bar previously. Antedomenico v. Antedomenico, 142 Conn. 558, 115 A. 2d 659 (1955), and Mooney v. Mooney, 80 Conn. 446, 68 A. 985 (1908), cited by the union, merely stand for the proposition that § 52-172 does not allow the admission of otherwise inadmissible hearsay. Here there is no reason not to consider Burstein's comments as recorded at the arbitration proceeding and his brief on Holodnak's behalf.

In any event, this court is not necessarily bound by Connecticut rules of evidence. See Fed.R.Civ.P. 43(a).

7/ Both the plaintiff and the defendants assume that the provisions of the Federal Arbitration Act are applicable to this labor arbitration. While there has been considerable debate on whether the Act applies to labor arbitration, the Second Circuit is of the view that it does. See Bell Aerospace Co. v. Local 516, UAW, - F.2d - (2d Cir. July 26, 1974), slip op. at 4977; International Assn. of Machinists v. General Electric Co., 406 F.2d 1046, 1049-50 (2d Cir. 1969).

8/ In Margetta v. Pam Pam Corp., 354 F.Supp. 158 (N.D. Cal. 1973), the district court held that the reasoning

of Vaca v. Sipes, supra, did not apply to cases in which the grievant had actually exhausted all the remedies provided by the collective bargaining agreement and then claimed that he had been unfairly represented. The court rejects this view. The clear import of Vaca is that the grievant must be afforded meaningful representation and denial of such representation requires that the grievant be permitted an opportunity to bring his own action in the district court. See Griffin v. UAW, 469 F.2d 181 (4th Cir. 1972); Andrus v. Convoy Co., 480 F.2d 604, 606 (9th Cir.), cert. denied, 414 U.S. 989 (1973); Harris v. Chemical Leaman Tank Lines, Inc., 437 F.2d 167, 171 (5th Cir. 1971).

9/ The description of the duty of fair representation contained in Amalgamated Association of Street Employees v. Lockridge, 403 U.S. 274, 301 (1971), which emphasized bad faith, does not change this conclusion. That case was concerned with pre-emption of a claim by the National Labor Relations Board and gave no indication that it intended to change the duty of fair representation as stated in Vaca. See Clark, The Duty of Fair Representation: A Theoretical Structure, 51 Texas L. Rev. 1119, 1126 (1973).

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NLRB pre-emption of Holodnak's claims is no problem here. While the company's dismissal of him is arguably an unfair labor practice, see NLRB v. Nu-Car Carriers, Inc., 189 F.2d 756, 760 (2d Cir. 1951), cert. denied, 342 U.S. 919 (1952), Holodnak may nonetheless sue under § 301, see Smith v. Evening News Assn., supra. Likewise, while the union's breach of its duty of fair representation may be an unfair labor practice, see NLRB v. Miranda Fuel Co., 326 F.2d 172 (2d Cir. 1963), Holodnak may still sue the union in district court for the breach. See Vaca v. Sipes, supra.

10/ It is now clear that a union cannot bargain away its members' rights under § 7 of the National Labor Relations Act, 29 U.S.C. § 157, to distribute pro- or anti-union literature in the plant so long as production or discipline is not disturbed. NLRB v. Magnavox Co., 42 U.S.L.W. 4300 (Feb. 27, 1974). If Holodnak's conduct was protected by § 7, see note 9 supra, then presumably the union here could not validly agree to any infringement of his rights. This, of course, would be a matter for determination, in the first instance, by the NLRB.

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11/ "Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." Gertz v. Robert Welch, Inc., 42 U.S.L.W. 5123, 5128 (U.S. June 25, 1974).

12/ This resolution makes unnecessary the determination of other issues presented here. Although Holodnak did not state as one of his claims the denial of his constitutional rights, this theme ran throughout the trial and the post-trial briefs. Reliance on the First Amendment rather than LMRA § 301 and 9 U.S.C. § 10 as a basis for his claims would presumably require resolution of the issue of whether the rationale of Bivens v. Six Unknown Named Agents, 403 U.S. 833 (1971), which allowed damage actions to remedy violations of the Fourth Amendment, extends to actions charging violations of the First Amendment. See Wahba v. New York University, supra, 492 F.2d at 103-04. The court expresses no views on this question, as well as the question of whether an action under the First Amendment can be used to bypass the tight restrictions on judicial review of a labor arbitrator's award. See generally Alexander v. Gardner-Denver Co., 42 U.S.L.W. 4214 (Feb. 19, 1974).

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It is also unnecessary to consider other possible grounds for vacating the arbitration award and granting Holodnak relief. One of these would be to hold that since the arbitrator is an instrument of national labor policy, he is not a mere "private" person, but rather one acting on behalf of the government who must take into account First Amendment rights. Cf. Buckley v. AFTRA, supra, 496 F.2d at 309-10. Closely related to this is the argument that the labor laws express a public policy encouraging free association and communication among employees and that courts are free to review and vacate an arbitration award which conflicts with that policy. Cf. Local 453, Electrical Workers v. Otis Elevator Co., 314 F.2d 25 (2d Cir.), cert. denied, 373 U.S. 949 (1963).

AFFIDAVIT AND EXHIBITS OF EUGENE N. SOSNOFF, DATED AUGUST 26, 1974.

Eugene N. Sosnoff, being duly sworn, makes the following statement:

I am a member of the law firm of Sosnoff, Cooper and Whitney, with offices at 35 Elm Street, New Haven, Connecticut 06510. This affidavit is submitted in support of an application for counsel fees in accordance with the instructions of the court set forth in its opinion filed August 15, 1974. The court has requested that "detailed proof" be offered "of the extent of time devoted in preparation and trial of this case, and the expenses incurred by all attorneys for whose services compensation is sought...."

I am a graduate of Yale Law School (L.L.B. 1951). In 1970, I returned to Yale Law School for a year's study on a Ford Urban Law Fellowship and received an LLM. I am admitted to practice before the courts of the states of Connecticut and New York and the federal courts in those jurisdictions. My present firm was formed in 1970. Prior to that, from 1967 to 1970, I was General Counsel for the New Haven Redevelopment Agency. From 1953 to 1967, I was an associate and then a partner in the New York law firm of Cooper, Ostrin, DeVarco & Ackerman, specializing in labor law. I have participated in a symposium and published an article directly related to the subject matter of this litigation: "Financing Democratic Ferment and Revolt Within Labor Unions Through Court-Awarded Counsel Fees," The New York University Twenty-First Annual Conference on Labor (1969) at p. 359.

AFFIDAVIT AND EXHIBITS OF EUGENE N. SOSNOFF, DATED AUGUST 26, 1974

I have been the attorney in my firm who has worked on this case, and I have put in a total of 421 1/2 hours* of attorney's time doing so. A schedule of the services rendered and dates and hours involved is annexed as Exhibit A.

One other attorney has worked on the case for plaintiff, namely, George Johnson. He was plaintiff's first attorney, and he was active in the case until May, 1972, when he gave up the practice of law in Connecticut and moved to Colorado to accept a teaching position at the University of Colorado Law School. At that time, he turned over full charge of the case to me.

Mr. Johnson had compiled 189** hours of services before he left. He has assigned his fee interest based on those hours to me, as he testified in his deposition of March 16, 1973 (plaintiff's Trial Exhibit 15, at p. 5). Before Mr. Johnson left Connecticut, he turned over to me as part of his file in the case, his handwritten time sheets. Copies of those sheets are annexed as Exhibit B.

While I took over sole responsibility for the case in the spring of 1972, that was not my initial contact with the litigation

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*The difference between the 421 1/2 hours reported here and the 386 hours stated in plaintiff's post-trial brief (at p.18) is accounted for by work done after completion of that brief, mostly in the research and writing of plaintiff's post-trial reply brief.

**The difference between the 189 hours reported here for Mr. Johnson and the 194 hours reported at p.18 of plaintiff's post-trial brief was caused by an error in addition resulting from a misreading of one of the numerals in Mr. Johnson's handwritten time sheets (Exhibit B annexed).

AFFIDAVIT AND EXHIBITS OF EUGENE N. SOSNOFF, DATED AUGUST 26, 1974

My first work on the case began in December, 1969, two months before the complaint was filed, when, as a panel attorney for the Connecticut Civil Liberties Union (CCLU), I received a communication from that organization requesting my advice as to whether there were "any significant civil liberties issues involved" in the case meriting CCLU's intervention.

After examining the material furnished to me, I informed CCLU that "a fundamental civil rights issue" was present. Thereafter, I attended two meetings of the CCLU Board of Directors to explain the importance I attached to the case and was authorized to apply to this Court for leave for CCLU to intervene as amicus curiae and to represent it in that capacity. As usual with CCLU panel attorneys, no compensation was offered for the work , nor was I reimbursed for any expenses involved.

Prior to the filing of the complaint, I met with George Johnson and discussed with him my views on the claims that should be asserted in the case. Thereafter, I was in frequent touch with him regarding the case. My first major court involvement with the case came in May, 1970, when I filed a brief on behalf of CCLU in opposition to defendants' motions to dismiss. Defendants, incidentally, oppossed CCLU's request for leave to intervene but were overruled by the Court.

Of the 421 1/2 hours of services I have accrued on the case, 36 1/4 hours were compiled during the period I represented CCLU as amicus curiae. The remainder of my services (385 1/4

hours) were devoted exclusively to plaintiff's representation. After I assumed sole responsibility for plaintiff's case, other attorneys substituted for me to represent CCLU, but they have not been active.

As the Court has observed in its opinion, "the rights vindicated here as the result of Holodnak's action will be of great benefit to all employees at the Avco Plant." Indeed, the decision breaks new ground and will significantly expand the horizon for industrial democracy not only for employees of Avco, but for all members of the United Automobile Workers International Union and union members generally, No employer will again contemplate dismissal of an employee for publishing a statement, and no union will risk hostility or indifference to the employee, without reckoning with the opinion in this case.

Benefits such as these to union workers would, as the Court pointed out in its opinion,"'be lost in most instances without the discretionary authority in courts to grant counsel fees,' since individual employees lack the resources to take on the company and the union" (citing Cole v. Hall, 462 F2d 777, 780 (1972). Benefit to members of the union at large was the ground for the counsel fee award in Ratner v. Bakery Workers Union, 335 F2d 691 (D.C. Cir. 1964), second appeal,354 F2d 504 (1965).

In pursuing this litigation, plaintiff served in the role of a private attorney general protecting First Amendment rights for union employees. Northcross v. Memphis Board of Ed.,

AFFIDAVIT AND EXHIBITS OF EUGENE N. SOSNOFF, DATED AUGUST 26, 1974

412 U.S. 427 (1973) (per curiam), and Newman v. Piggie Park Enterprises, 390 U.S. 400 (1968). This suit effectuates the important Congressional policy favoring uninhibited rights of free expression for union members (29 USC §411 (a)2). The outcome will discourage repetition of the unlawful behavior. Stolberg v. Members of Board of Trustees for State Colleges of Connecticut, 474 F2d 485 (2d Cir. 1973). See also: Sims v. Amos, 334 F. Supp. 691 (Three-Judge Court, per curiam), aff's mem. Amos v. Sims, 409 U.S. 942 (1972). Moreover, the fact that the first 36 1/4 hours of services were rendered at the request of CCLU, a non-profit organization, does not affect entitlement to compensation for those services. Jordan v. Fursari, 496 F2d 646, 649 (2d Cir. 1974).

The typical billing rate for experienced and competent counsel in federal litigation in the Bridgeport - New Haven area is $65.00 an hour. On a straight hourly calculation, the 610 1/2 hours representing George Johnson's and my combined services would call for a fee of $39,682.50. However, it is recognized that in determining the value of an attorney's services, more than simply the number of hours spent on the case should be taken into account. Additional factors usually considered in making fee determinations include:

(1) The novelty and complexity of the legal issues involved and counsel's skill and specialized knowledge in dealing with them.

AFFIDAVIT AND EXHIBITS OF EUGENE N. SOSNOFF, DATED AUGUST 26, 1974

(2) The fact that counsel's extensive services were rendered on a contingent fee basis with the risk of going uncompensated if unsuccessful.

(3) The stubborness of the defense, making prolonged litigation necessary. Here defendants resisted energetically at every stage of the case and rejected without a counter offer efforts on plaintiff's part to settle.

(4) The scope and importance of the benefits achieved by the litigation

Newman v. RKO General, Inc., 332 F. Supp. 161 (SDNY 1971)

Mesh v. Goldfield Corp., 60 RFD 595 (SDNY 1973)

Based on these criteria, a reasonable premium above the prevailing hourly rate is justified. The fee of $50,000.00 requested is approximately 25% more than the straight hourly calculation at $65.00 per hour. We believe that it is reasonable.

The Court in its opinion also requested information on expenses incurred in the litigation. We have endeavored throughout to hold expenses to a minimum. Listed below are certain out-of-pocket expenses for which we have been reimbursed by the plaintiff. He should be made whole for them. All other expenses have been absorbed as office overhead and no separate record of them has been kept. The expenses for which plaintiff has reimbursed us are:

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Transcript of George Johnson's Deposition	$ 55.40
Transcript of proceedings before Hon. Robert C. Zampano	6.00
Transcript of Gen. Beverly Warren's Deposition	113.50
Subpoena Fee	22.00
U.S. Marshall Fee	5.40
Xeroxing expenses	38.45
Toll telephone calls	27.61
	$248.36

Wherefore, I respectfully request that an award of counsel fees be made in the amount of $50,000.00 plus the sum of $248.36 to be paid to plaintiff for expenses incurred in this litigation.

Eugene N. Sosnoff

AFFIDAVIT AND EXHIBITS OF EUGENE N. SOSNOFF, DATED AUGUST 26, 1974

EXHIBIT A

SCHEDULE OF HOURS AND SERVICES RENDERED IN HOLODNAK CASE

Date	Services Rendered	Hours
1969		
Dec. 16	Reviewed correspondence and background material received from CCLU re Holodnak case, preliminary research on law	1.50
1970		
Jan. 29	Attended CCLU Board of Directors meeting, at Yale Law School, to advise regarding support for Holodnak case.	3.00
Feb. 4	Meeting with George Johnson to discuss claims to be made in Holodnak case	1.50
Feb. 27	Reviewed Holodnak complaint as filed by Johnson	1.00
Mar. 5	Correspondence CCLU re Holodnak	.50
Mar. 23	Attended second CCLU Board of Directors meeting at Yale Law School and was authorized to appear on behalf of organization as amicus curiae in Holodnak case	2.00
Mar. 26	Correspondence George Johnson re Holodnak	.25
May 6	Meeting George Johnson	2.00
May 14	Prepared motion for leave for CCLU to intervene as amicus curiae	1.00
May 18-22	Researched and drafted brief for CCLU in opposition to motions to dismiss	12.00

AFFIDAVIT AND EXHIBITS OFEUGENE N. SOSNOFF, DATED AUGUST 26, 1974

July 22	Reviewed decision of Judge Zampano on motion to dismiss	.50
August 12	Correspondence CCLU	.50
Sept. 15	Prepared draft of request for production of documents and mailed to Johnson.	3.00
1971		
Feb. 4	Prepared request for production of documents in final form and met with Johnson to discuss same.	3.00
Apr. 2 and 5	Researched and prepared memorandum for CCLU in support of plaintiff's request for production of documents	3.00
Nov. 9	Reviewed and edited George Johnson's draft of interrogatories to defendants	1.50
1973		
Jan. 25-26	Commenced preparation for pre-trial conference. Reviewed file, prepared questions for meeting with Holodnak	6.00
Jan. 29	Meeting Mike Holodnak	2.00
Jan. 31	Research of law for pre-trial memorandum	7.25
Feb. 1	Research of law for pre-trial memorandum	3.50
	Conference George Johnson	.50
	Preparation of notice to take deposition of George Johnson	1.00
	Preparation of notice of substitution	.50

AFFIDAVIT AND EXHIBITS OF EUGENE N. SOSNOFF, DATED AUGUST 26, 1974

Feb. 3	Correspondence George Johnson re subject matter of deposition	2.50
Feb. 5	3 conferences (telephone) Ed Sheehy	.75
Feb. 6	Further review of file material	3.00
	Meeting Mike Holodnak	2.00
	Stipulation and correspondence concerning postponement of deposition	1.00
Feb. 7	Conference Elizabeth Henderson regarding availability as witness	.25
Feb. 7	Conference Joelle Dominski regarding availability as witness	.25
Feb. 8	Research for pre-trial memorandum	6.00
Feb. 9	Additional research for pre-trial memorandum	6.00
Feb. 10	Dictated rough draft of portion of pre-trial memorandum	4.00
	Prepared rough drafts of other submissions for pre-trial conference (witness list, exhibit list, statement of special damages).	6.00
Feb. 11	Additional research and drafting of pre-trial memorandum	5.00
Feb. 12-13	Additional work on pre-trial memorandum	7.00
Feb. 14	Completed work on pre-trial memorandum and other pre-trial material	6.00
	Pre-trial conference	2.00

AFFIDAVIT AND EXHIBITS OF EUGENE N. SOSNOFF, DATED AUGUST 26, 1974

Feb. 16	Correspondence George Johnson	.75
	Prepared motion to withdraw as counsel for CCLU and continue as counsel for Holodnak	1.00
Mar. 5	Prepared new notice to take George Johnson's deposition	1.00
Mar. 5	Correspondence Ed Sheehy	.50
Mar. 19	Hearing on Johnson's motion to withdraw as counsel for plaintiff and Sosnoff's motion to withdraw as counsel for CCLU but remain as counsel for plaintiff.	1.50
Mar. 23	Correspondence George Johnson	.25
Apr. 2	Hearing on Avco's motion to clarify preliminary pre-trial order	1.50
Apr. 9	Correspondence Joelle Dominski	.25
Apr. 13	Reviewed transcript of Johnson's deposition	1.25
Apr. 16	Correspondence George Johnson	.25
Apr. 16, 17, 19 23, 25, 27, May 1	Preparation of affidavit for Michael Holodnak in support of motion for summary judgment	13.00
Apr. 17	Meeting Michael Holodnak	2.50
May 9	Interviewed Joelle Dominski and prepared draft of affidavit for her	2.50
May 14-15	Preparation of draft of affidavit for John Fernandez	3.00
May 16-17	Completed Joelle Dominski's affidavit	3.50
May 17	Meeting John Fernandez and more work on affidavit	2.25

AFFIDAVIT AND EXHIBITS OF EUGENE N. SOSNOFF, DATED AUGUST 26, 1974

May 18	Completion of Fernandez affidavit	1.00
May 24, 25, 27, 28, 29, 30, 31, June 1	Researched and wrote brief in support of motion for summary judgment	50.50
June 4, 5, 6, 8, 10, 11, 14	Drafted and completed reply brief	34.00
June 11	Served corrections for main brief filed June 4	2.00
June 15-17	Prepared oral argument on motion for summary judgment	6.00
June 18	Hearing on motion for summary judgment	2.00
Oct. 11	Studied decision of Magistrate Latimer on motion for summary judgment and discussed with Holodnak	3.00
Oct. 31	Conference with Mike Holodnak about making settlement proposal	.50
Nov. 1	Prepared settlement proposal and mailed to Ed Sheehy	1.00
1974		
Jan. 28	Prepared notice to take deposition of Gen. Beverly Warren	.75
Feb. 19-21	Prepared memorandum in opposition to defendants' motion for protective order against taking deposition of Gen. Beverly Warren	6.00
Feb. 25	Hearing on motion for protective order	1.50
Mar. 21	Commenced preparation for trial: reviewed file	2.00

AFFIDAVIT AND EXHIBITS OF EUGENE N. SOSNOFF, DATED AUGUST 26, 1974

Mar. 21	Library research for trial brief	2.25
	Prepared questions for meeting with Michael Holodnak	2.75
Mar. 22	Further work on Holodnak file	
	Library research	
	Further work on questions for Mike Holodnak	3.00
Mar. 25	Meeting Mike Holodnak	2.50
Apr. 1-3	Prepared proposed stipulation of facts in lieu of deposition of Gen. Beverly Warren	7.00
Apr. 11	Prepared questions for deposition of Gen. Beverly Warren	5.00
Apr. 15	Conducted deposition of Gen. Beverly Warren	2.00
Apr. 16, 17, 18, 19	Additional research on Holodnak trial brief and commenced dictating draft of brief	18.00
Apr. 17	Prepared subpoena duces tecum for Gen. Beverly Warren and delivered to Marshall for service	2.50
Apr. 21	Prepared questions for Joelle Dominski	2.25
Apr. 22	Meeting Joelle Dominski to review testimony	2.00
	Further research on trial brief and more dictation on draft	4.00
Apr. 23	Further work on questions for Michael Holodnak	2.25
	Meeting with Mike Holodnak to review questions and financial loss data	3.50

AFFIDAVIT AND EXHIBITS OF EUGENE N. SOSNOFF, DATED AUGUST 26, 1974

Apr. 24, 25, 26	Completed trial memorandum, statement of special damages, list of witnesses and list of exhibits. Researched law on subpoenas duces tecum	16.00
Apr. 27, 28	Prepared for oral presentation at trial	6.00
Apr. 29	Present at courthouse in Bridgeport for trial	6.00
Apr. 29	Preparation for second day of trial	2.00
Apr. 30	Present at courthouse in Bridgeport for trial	6.00
May 5	Reviewed union's and company's briefs	3.00
May 6-14	Prepared and filed post-trial brief and revised financial statement	34.00
May 17	Reviewed Avco's and union's post-trial briefs	1.50
	Commenced library research for reply brief	3.00
May 19	Started dictating draft of reply brief	3.00
May 20	More library research and dictation on draft of reply brief	9.00
May 21-23	Redrafted reply brief	12.00
May 24	Completed and filed reply brief	7.00
	Total	421 1/2 hours

AFFIDAVIT AND EXHIBITS OF EUGENE N. SOSNOFF, DATED AUGUST 26, 1974

EXHIBIT B

Statutes

TIME SHEET — HOLODNAK

~~Wolff~~

DATE	WORK	TIME (HRS)
6/2/69	Original interview	1.0
7/8/69	Call to Ed Burstein charges $ 0.30	0.25
11/30/69	Phone interview w MH	1.00
12/1/69	Phone interview w Clyde Summers	1.00
12/17/69	Interview w MH in Hospital	2.00
1/12/70	Research	7.25
1/13/70	Research	6.00
1/15/70	Research	7.00
1/19/70	"	5.25
1/20/70	"	6.25
1/28/70	Research and Drafting	7.00
2/1/70	" " "	7.50
2/5/70	" " "	6.00
2/6/70	" " "	5.00
2/16/70	Filing and trips to Xerox	1.00
5/4/70	Hearing of Motions to Dismiss	6.00
5/6/70	Meeting w Sosnoff	2.00

AFFIDAVIT AND EXHIBITS OF EUGENE N. SOSNOFF, DATED AUGUST 26, 1974

5/2/70	Research on Brief	6.00
5/8/70	" " "	7.00
5/11/70	" " "	6.25
5/12/70		8.25
10/15/70	Prep of Motions to Def & Research	1.00
2/1/71	Research on Discovery	8.25
2/2/71	" " "	1.00
2/3/71	" " " Motion Prep	3.50
2/4/71	Meeting with Counsel	1.50
2/23/71	Prep of Motions to Compell	1.50
2/24/71	" " " "	6.50
4/5/71	Conference (2)	2.00
UNITED STATES CODE ANNOTATED	Hrg. on Motion to Compell	2.00
5/5/71	Prep of Motion to Attach Vouchers	3.25
5/10/71	Phone interviews w Plaintiff + Filing of Motion	1.00
9/15/71	Abstracting of transcript - Research	4.50
11/[illegible]/71	Drafting of Interrogatories	6.25
DIGEST OF DECISIONS	" "	5.75
11/10/71	" "	6.00
11/11/71	" "	6.25
2/21/72	Research on Brief S.J.	6.00
CORPUS JURIS 2/22/72	Research on Brief S.J.	5.25
2/23/72	"	4.50
Encyclopedias 2/26/72	"	6.25
3/4/72	Writing Brief S.J.	6.50
Treatises 3/5/72	"	3.25

OBJECTIONS OF DEFENDANT AVCO TO AFFIDAVIT OF EUGENE N. SOSNOFF.

Pursuant to the Memorandum of Decision of this Court filed on August 15, 1974, the defendant, Avco, hereby objects to the affidavit of Eugene N. Sosnoff dated August 26, 1974, and received by the undersigned on August 27, 1974, pertaining to the claim of the counsel for the plaintiff for attorney's fees and expenses, for the reasons set forth below.

The defendant, Avco, hereby reserves its right to file an appropriate post judgment motion to have the Court reconsider inter alia its award of punitive damages to the plaintiff and the allocation of punitive damages between the defendant Avco and the defendant Union.

I. There is no statutory or contractual basis to award attorney's fees in this case. It has long been the general rule that attorney's fees are not recoverable in an action by a prevailing party in the absence of a statute or a contract providing for the awarding of attorney's fees. Hall v. Cole, 412 US 1 (1973); Fleischmann v. Maier Brewing Co., 386 US 714, 717, (1967). The plaintiff instituted the above entitled action under 9 U.S.C. §10 and 29 U.S.C. §185, neither of which statutes contains a provision for the Court to award counsel fees to the prevailing party. Further, there was no evidence produced at the trial of any contractual basis for the award of attorney's fees.

OBJECTIONS OF DEFENDANT AVCO TO AFFIDAVIT OF EUGENE N. SOFNOFF

1. An exception to the general rule prohibiting the award of counsel fees has developed where there has been evidence that the party against whom the judgment has entered has acted in bad faith, vexatiously, wantonly or for oppressive reasons or where the litigation has conferred a substantial benefit on members of an ascertainable class. Hall v. Cole, 412 US 1, 5 (1973)

(a) There was no evidence produced at the trial that the defendant Avco acted in bad faith, vexatiously, wantonly or for oppressive reasons so as to permit the Court to award counsel fees to the plaintiff in this case. Indeed, the record produced at the trial clearly shows that at every step of the proceedings from the initial grievance procedure to the arbitration hearing the defendant Avco complied with all steps in the grievance and arbitration proceedings as required under the collective bargaining agreement and under the applicable labor law. The defendant Avco is not responsible for the actions of the arbitrator, or for the conduct of the Union or its counsel, and the actions of the arbitrator and the Union cannot form the basis to require the defendant Avco to pay counsel fees to the plaintiff. In addition, there was no evidence produced at the trial that the award of counsel fees in this case to the plaintiff would confer a substantial benefit on members of an ascertainable class and, therefore, there is no basis for the Court to award counsel fees to the plaintiff in this case.

OBJECTIONS OF DEFENDANT AVCO TO AFFIDAVIT OF EUGENE N. SOSNOFF

II. The legal fees claimed by Attorney Eugene N. Sosnoff in his affidavit dated August 26, 1974, in the amount of $50,000 allegedly based on 610 1/2 hours at an hourly rate of $65.00 per hour plus a 25% premium, are excessive and unconscionable, and are not supported by competent evidence in the affidavit for the following reasons:

(1) The only evidence produced at trial concerning attorney's fees was contained in a deposition of Attorney George A. Johnson, the original attorney for the plaintiff in this case, Plaintiff's Exhibit 15, wherein he testified under oath:

> My original agreement with Mr. Holodnak was that I would share in any award which he might get, but I have since renounced that interest and assign whatever interest I have in this case to Mr. Sosnoff. (See pages 4 and 5 of Plaintiff's Exhibit 15, which is attached to this Objection as Exhibit A.)

The testimony of Attorney Johnson set forth above can only be interpreted as a contingent fee arrangement with the plaintiff in this case. Since there is no evidence of Attorney Sosnoff's fee arrangement with the plaintiff, it must be assumed that Attorney Sosnoff also has a contingent fee arrangement with the plaintiff, since he claims to be the assignee of whatever interest Attorney Johnson had in this case. Indeed, Attorney Sosnoff

appears to state under oath on page 5 of his affidavit that his services were "rendered on a contingent fee basis".

(2) The best evidence of the time spent is the original time records of Attorney Sosnoff which have not been submitted in support of his affidavit.

(3) The defendant Avco should have the right to cross-examine Attorney Sosnoff on the amount of his counsel fees.

(4) The affidavit of Attorney Sosnoff is purely self-serving and is not competent evidence on which this Court can base an award for attorney's fees.

(5) The $50,000 counsel fees claimed by Attorney Sosnoff in this action, which is more than two and one-half times the amount awarded to the plaintiff as damages, are excessive and unconscionable and are in violation of Canon 12 of the Canons of Professional Ethics which provides in pertinent part:

> In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money getting trade.

(6) 297 1/2 hours of the total amount of 610 1/2 hours claimed by Attorney Sosnoff for his compensation in this case were not spent by Attorney Sosnoff in representing the plaintiff, Michael Holodnak, in this action which is demonstrated as follows:

OBJECTIONS OF DEFENDANT AVCO TO AFFIDAVIT OF EUGENE N. SOSNOFF

(i) 189 hours were incurred by Attorney Johnson who originally represented the plaintiff in this action and for which time Attorney Johnson does not seek compensation. (See Exhibit A attached hereto.)

(ii) There is no evidence of any valid consideration for the claimed assignment of Attorney Johnson's fee interest in this case to Attorney Sosnoff.

(iii) 108 1/2 hours were spent by Attorney Sosnoff while he was counsel for the Connecticut Civil Liberties Union which had appeared as Amicus Curiae in this case, for which time Attorney Sosnoff did not expect to receive compensation and should, therefore, not be compensated for by this Court and which time was spent by Attorney Sosnoff prior to his withdrawal of appearance for the Connecticut Civil Liberties Union and his entry of appearance for the plaintiff, Michael Holodnak, which was granted by the Court on or about March 19, 1973.

(7) As to the remaining 313 hours claimed to have been incurred by Attorney Sosnoff, there is no competent evidence

(i) that 313 hours constitute a fair and reasonable amount of time for the preparation and trial of this action.

(ii) that the hourly rate of $65.00 per hour is a fair and reasonable hourly rate for the preparation and trial of this action.

OBJECTIONS OF DEFENDANT AVCO TO AFFIDAVIT OF EUGENE N. SOFNOFF

(iii) that a premium of 25% in addition to the amount determined by multiplying the hours by the hourly rate is fair and reasonable and customary for the preparation and trial of this action.

(iv) that Attorney Sosnoff customarily charged $65 an hour to his clients and a premium of 25% for handling cases of a similar nature.

WHEREFORE, the defendant, Avco, respectfully requests the Court to enter the following orders:

1. To reconsider its award of counsel fees and expenses to the plaintiff in this litigation and deny the plaintiff counsel fees and expenses for the reason that the plaintiff has failed to sustain his burden of proof that he is entitled to counsel fees for the reason set forth above;

2. To sustain the defendant Avco's objections to the affidavit of Eugene N. Sosnoff for counsel fees for the reason that said affidavit of Attorney Sosnoff does not constitute competent evidence, is purely self-serving, is contrary to the evidence produced at the trial, contains a claim for counsel fees which is excessive and unconscionable, contains a claim for hours spent by Attorney Sosnoff when he was not representing the plaintiff, and for the further reason that the defendant Avco is deprived of the right to cross-examine Attorney Sosnoff on the amount of counsel fees claimed;

OBJECTIONS OF DEFENDANT AVCO TO AFFIDAVIT OF EUGENE N. SOSNOFF

3. To grant the defendant Avco's Motion for Evidentiary Hearing which is being filed simultaneously with the Court with this Objection so that the defendant Avco may have the right to cross-examine Attorney Sosnoff concerning his claim for attorney's fees.

EXHIBIT A

Q What is your present occupation?

A I'm an Assistant Director and a Staff Attorney with the Legal Aid and Defender Program at the University of Colorado School of Law here in Boulder.

Q What Bar admissions do you hold?

A I'm admitted to practice in the State of Colorado, State of Pennsylvania, State of Connecticut. I'm admitted also in the Relevant Federal Circuit Courts, the 10th, 2nd, the 3rd and the Relevant Federal District Bars, District of Colorado, District of Connecticut and Eastern District of Pennsylvania.

Q Did you previously participate in any capacity in this litigation?

A Yes, I did.

OBJECTIONS OF DEFENDANT AVCO TO AFFIDAVIT OF EUGENE N. SOSNOFF

Q Please state the nature of your participation.

A I was the counsel for Michael Holodnak, H-O-L-O-D-N-A-K, who is the plaintiff in this action.

Q Have you withdrawn from this case?

A I have filed a Motion to Withdraw as counsel citing reasons therefor. The motion, as I understand it, has been noticed and will be heard in Bridgeport, Connecticut, on March 19th of this year, that was pursuant to a request by Magistrate Arthur Latimer, L-A-T-I-M-E-R, a request made by him at the pre-trial conference in this action.

Q Do you have any remaining fee interest in this case?

A None.

Q Did you anticipate collecting a fee in this case?

A My original agreement with Mr. Holodnak was that I would share in any award which he might get but I have since renounced that interest and assigned whatever interest I have in this case to Mr. Sosnoff, S-O-S-N-O-F-F.

Q Please explain how you came to represent the plaintiff.

A Well, this case arose in 1969 and at that time I was practicing in New Haven as a sole practioner. One of my clients at that time was the American Independent

OBJECTIONS OF DEFENDANT AVCO TO AFFIDAVIT OF EUGENE N. SOSNOFF

Movement which I'll call by its abbreviation AIM. One of the activities of AIM was the publication of a newsletter called the AIM Newsletter. The AIM Newsletter had a circulation at that time of around 700. I published articles of interest to AIM members on which AIM members thought would be of interest to the public. One of the interests of AIM was the union movement.

Q And would you explain how Mr. Holodnak ties in to your representation of him.

A Yes. Sometime in 1969 Mr. Holodnak wrote an article for the AIM Newsletter which was published under the title "Building a Union Local." It later transpired that Mr. Holodnak was discharged from his job at the Avco, A-V-C-O, Corporation presumably as a result of our

MOTION OF DEFENDANT AVCO FOR EVIDENTIARY HEARING ON ATTORNEY'S FEES.

The defendant, Avco-Lycoming Division of Avco Corporation, respectfully requests the Court to order an evidentiary hearing on the amount of counsel fees claimed by the attorney for the plaintiff in this case in view of the objections filed by the defendant Avco dated September 5, 1974, and permit the defendant to cross-examine Attorney Sosnoff as to the amount of his counsel fees, and to produce evidence, if necessary, to dispute the claim of $50,000 for counsel fees.

SUPPLEMENTAL OPINION OF THE HONORABLE J. EDWARD LUMBARD WITH RESPECT TO ATTORNEY'S FEES.

The court has considered the affidavits concerning attorneys' fees that have been filed pursuant to its Opinion dated August 15, 1974. Plaintiff's attorney, Eugene N. Sosnoff, claims fees in an amount of $50,000. This sum was calculated on the basis of a $65 per hour rate on 610½ hours plus a 25% "bonus" because of the complexity of the case. Of the claimed 610½ hours, the court feels that the 189 hours claimed under assignment from George Johnson, the first attorney in the case, should be disallowed since it does not appear that Mr. Johnson expects or has received any compensation or consideration for his services or for the assignment of his claim. Furthermore, the court feels that the 36¼ hours expended by Mr. Sosnoff on behalf of the Connecticut Civil Liberties Union should not be compensated because neither the Civil Liberties Union nor Mr. Sosnoff expected any compensation for such work done as friend of the court. The remaining 385¼ hours were, according to Mr. Sosnoff's affidavit, expended by him on this case for the plaintiff and not for any other party. Accordingly, Mr. Sosnoff should be compensated on the basis of the time so spent.

In his affidavit responding to defendants' objections to the awarding of attorneys' fees Mr. Sosnoff indicates that

SUPPLEMENTAL OPINION OF THE HONORABLE J. EDWARD LUMBARD
WITH RESPECT TO ATTORNEY'S FEES

his firm normally charges its clients at a rate of $50 per hour. The court feels that this rate is appropriate and therefore finds that plaintiff's attorney should receive $19,275 rounded to an even $20,000 for attorneys' fees to which should be added $248.36 for out of pocket expenses.

As the affidavits filed by the parties provide a sufficient basis for determining the award of attorneys' fees, the evidentiary hearing requested by Avco is not needed.

It follows that judgment should be entered for Eugene N. Sosnoff to recover from Avco in the sum of $13,498.91 and to recover from Local 1010, UAW in the sum of $6,749.45 for the reasons set forth in this court's Opinion of August 15, 1974.

United States Circuit Judge
Sitting by designation

Dated: September 19, 1974.

JUDGMENT.

This case came on for trial to the Court, the Honorable J. Edward Lumbard, United States Circuit Judge, Sitting by Designation, presiding, and the issues having been duly tried and the Court having filed its Memorandum Of Decision under date of August 15, 1974, and the Court having filed its Supplemental Opinion with respect to attorney's fees on September 19, 1974,

IT IS ACCORDINGLY ORDERED, ADJUDGED AND DECREED that as to the first cause of action, judgment in favor of the plaintiff and against the defendant, Avco Corporation, is hereby granted and ordered entered as follows:

> The plaintiff recover of the defendant, Avco Corporation, the sum of $9,113.24 in back pay plus $10,000.00 in punitive damages with interest at 6% from the date of judgment;

That as to the second cause of action, judgment against the plaintiff and in favor of the defendant Avco Corporation is hereby granted and ordered entered as follows:

> The plaintiff's request for reinstatement to his former job at Avco as a result of the violation of his contractual rights under the collective bargaining agreement is denied;

That as to the third cause of action, judgment against the plaintiff and in favor of the defendant, Local 1010 United Auto Workers of America, is hereby granted and ordered entered as follows:

> Plaintiff's claim that Local 1010 breached its duty of fair representation, thereby entitling him to reinstatement and monetary damages is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment be and is hereby entered for Eugene N. Sosnoff to recover his attorney's fees from Avco in the sum of $13,498.91 and to recover attorney's fees from Local 1010,

JUDGMENT

UAW, the sum of $6,749.45. Costs are taxed in favor of the plaintiff and against the defendant Avco only.

Dated at Bridgeport, Connecticut, this 19th day of September, 1974.

SYLVESTER A. MARKOWSKI, Clerk

By: Vincent R. DeRosa
Deputy-in-Charge

APPROVED:

United States Circuit Judge
Sitting by Designation as
United States District Judge

CORRECTED JUDGMENT.

This case came on for trial to the Court, the Honorable J. Edward Lumbard, United States Circuit Judge, Sitting by Designation, presiding, and the issues having been duly tried and the Court having filed its Memorandum of Decision under date of August 15, 1974, and the Court having filed its Supplemental Opinion with respect to attorney's fees on September 19, 1974,

It is accordingly ORDERED, ADJUDGED and DECREED that as to the first cause of action, judgment in favor of the plaintiff and against the defendant, Avco Corporation, is hereby granted and ordered entered as follows:

> The plaintiff recover of the defendant, Avco Corporation, the sum of $9,113.24 in back pay plus $10,000.00 in punitive damages with interest at 6% from the date of judgment;

That as to the second cause of action, notwithstanding the fact that the defendant, Avco Corporation, violated the plaintiff's contractual rights under the collective bargaining agreement, judgment against the plaintiff and in favor of the defendant Avco Corporation is hereby granted and ordered entered as follows:

> The plaintiff's request for reinstatement to his former job at Avco, as a result of the violation of his contractual rights under the collective bargaining agreement, is denied;

CORRECTED JUDGMENT

That as to the third cause of action, on the question of breach of fair representation, judgment in favor of the plaintiff and against the defendant, Local 1010, United Auto Workers of America is hereby granted but the relief requested by the plaintiff on the question of reinstatement and monetary damages against Local 1010, United Auto Workers of America is hereby denied and ordered entered as follows:

> Plaintiff's claim that the defendant, Local 1010, United Auto Workers of America, breached its duty of fair representation is upheld.
>
> Plaintiff's claim for reinstatement and monetary damages as a result thereof is denied.

It is further ORDERED, ADJUDGED and DECREED that judgment be and is hereby entered for Eugene N. Sosnoff to recover his attorney's fees from Avco in the sum of $13,498.91 and to recover attorney's fees from Local 1010, UAW, the sum of $6,749.45. Costs are taxed in favor of the plaintiff and against the defendant Avco only.

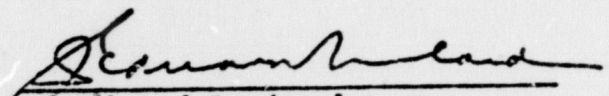
Dated at Bridgeport, Connecticut, this 27th day of September, 1974.

SYLVESTER A. MARKOWSKI, Clerk

By Vincent R. DeRosa
Vincent R. DeRosa
Deputy in Charge

CORRECTED JUDGMENT

APPROVED:



J. Edward Lumbard
United States Circuit Judge
Sitting by Designation as
United States District Judge

M I C H A E L F. H O L O D N A K , called as a witness, having been first duly sworn, testified on his oath as follows:

THE CLERK: Please state your full name and address.

THE WITNESS: Michael F. Holodnak. 38 Morris Lane, Milford, Connecticut.

THE CLERK: You may be seated.

DIRECT EXAMINATION

BY MR. SOSNOFF:

Q Mr. Holodnak, how old are you?

A Forty-nine.

Q Are you married?

A Yes.

Q Is your wife in the Courtroom?

A Yes.

Q Are you presently employed?

A Well, I'm teaching at the University of Bridgeport on a part-time basis.

Q Is that remunerative? Are you paid for it?

A No. I am not. It is a voluntary thing.

Q How many hours a week do you work?

A It's about approximately three, two hours.

Q So you have one course at the University of Bridgeport; is that right?

A Well, the one I am teaching is one course.

Q For whom did you last work?

A Well, the last full time employment was with Avco Corporation in Stratford, Connecticut.

Q And when did your employment with Avco terminate?

A May 28, 1969.

Q How long had you been working for Avco continuously prior to May 28, 1969?

A Approximately nine and a half years.

Q At the time you had terminated, what was your job?

A I was a Parts Inspector A, inspecting in process parts in the departments.

Q Had you had any other jobs at Avco?

A Well, I worked in the Experimental Department as a tool maker.

Q And was that during the nine years that you worked for Avco?

A Yes. It was.

Q When did you work as a tool maker?

A It was from 1960 until about 1963.

Q And from 1963 until termination in 1969, you were a Small Parts Inspector; is that right?

A Yes.

Q What is your trade or skill or if you have one?

A Well, basically, I am a tool and die maker.

Q Now, is there a union at Avco that represents the employees?

A Yes.

Q What is the name of that union?

A It's Local 1010 U.A.W.

Q And were you a member of the union while you were working for Avco?

A Yes. I was.

Q And did the union during the period you worked for Avco maintain, in effect, with Avco a collective bargaining agreement governing terms and conditions of employment?

A Yes. It did.

Q I'm going to show you this booklet and ask you if this is the Agreement that was maintained in effect with the union?

A Yes. It is.

MR. SOSNOFF: I would like to offer this in evidence.

MR. COONEY: Is that the one for the period involved?

MR. SOSNOFF: '67.

MR. COONEY: I have no objection. There is writing on the front page of the book and and last page of the book. I assume that the

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BY MR. SOSNOFF:

Q Will you describe briefly the type of work Avco was engaged in in 1969 at the time you were fired?

A Well, basically, they were making aircraft engines for helicopters, constant speed drives and nose cones for missiles.

Q What were the constant speed drives for? Do you know?

A It was for one of the engines. I think for the Army.

Q Was it an airplane engine?

A It was an aircraft engine, yes.

Q I see. And do you of your own knowledge know of anything else Avco was doing at the time you were fired?

A Well, I don't really know specifically all the other things they were engaged in, but I know that those three are the main things they were doing.

Q Now, what particular work were you engaged in?

A Well, I was inspecting the parts as they came off various operations in various machines in process.

Q Were they parts for the different types of machines that were made, namely, the helicopter engines, the constant speed drives and the nose cones or were they parts for one of those things?

A The parts, basically, in the Department I was

inspecting were parts for the helicopter engines.

Q I see. And from your knowledge, Mr. Holodnak, is it fair to say that the majority of the work done at the Avco plant was for helicopter engines?

A Yes.

Q Now, did you work on helicopter engines throughout your employment at Avco?

A Well, there was a period in 1963 until about 1965 when I worked in the department where they made missiles. That was for the Air Force.

Q The missiles were made for the Air Force. Do you know who the helicopter engines were made for?

A I believe for the Army.

Q Do you know who the constant speed drives were made for, if you know?

A Yes.

Q Who were they made for?

A Either the Navy -- I think the Navy.

Q Now, how many employees did Avco have in 1969, if you know?

A Well, they had reduced it considerably from about 10,000 that they had in the peak period of 1967 and '68, I think they brought it down to 8,000, I think. Maybe less. Approximately.

Q You believe it was approximately 8,000 in 1969;

is that right?

A Approximately that, yes.

Q From time to time while you were working at Avco, did you observe Defense Department personnel at the plant?

A Yes. I did.

Q Can you tell us what they were doing, if you know?

A Well, I can assume that they were overseeing the operations throughout the plant, the quality control and the production process.

Q Now, at any time prior to your termination on May 28, 1969, were you ever disciplined at Avco for misconduct?

A Well, I never was disciplined to the extent that it was sustained.

Q What do you mean by that answer?

A Well, there was one disciplinary warning which I had received which was rescinded several weeks later, a couple of weeks later, but that's about it.

Q So, in effect, no disciplinary action had ever been sustained against you at Avco; is that right?

A That is correct.

Q You had a clean record?

A Yes.

Q And what were you making, Mr. Holodnak, at the

time you were dismissed?

A In money?

Q In money.

A $3.73 an hour.

Q And did you work a 40 hour week?

A Well, we had been working overtime steadily prior to that, but then it was cut down to about every second Saturday would be eight hours. The overtime fluctuated, but at the time of termination, I believe we had overtime only on a irregular basis.

Q Before we get to the overtime, did you work a regular forty hour week?

A Oh, yes.

Q At $3.73 an hour?

A Yes.

Q Now, what was your weekly pay at $3.73 an hour?

A Well, may I refer to these figures?

Q Sure.

A At $3.73 per hour, I was getting $149.20 per week for forty hours.

Q Is it $3.73 or $3.74?

A I believe it's $3.73.

Q All right. Now, you said something about overtime. In 1969, did you regularly put in some overtime?

A Oh, yes.

Q Can you tell us how much on the average in overtime you worked?

A Well, at that time was when the overtime was pretty well cut down and it was only about every second Saturday, roughly.

Q What would that average out to?

A Well, it would average four hours a week.

Q In other words, every second Saturday you worked a Saturday; is that right?

A Yes. About eight hours. Right.

Q And you were paid time and a half?

A Yes.

Q So that you earned approximately $20.00 a week overtime on the average? Is that right?

A Yes.

MR. SOSNOFF: May I have Exhibit 2 for a moment, please?

Q Mr. Holodnak, is the job you held referred to in the Collective Bargaining Agreement?

A Yes.

Q All right. Will you show us where your job is listed with its wage rate for 1969?

A It's listed on Page 84.

Q May I see that?

A Wait. That is the hourly rate. You want the

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and a penciled line at that page.

A Yes.

Q Did you put that in the agreement? Did you write that?

A Yes, sir.

Q I see.

MR. SOSNOFF: Did Your Honor want to see this?

THE COURT: No.

BY MR. SOSNOFF:

Q Now, can you show us where in this agreement your specific job is referred to by description?

A On Page 78.

Q I notice on Page 78 that there is a line that has been underscored in red crayon. Did you make those red crayon marks?

A Yes.

Q The line underscored, is that your job?

A Yes. It is.

Q At that particular point in the agreement, the agreement reads: "Parts Inspector-A". Then there is a column "Job Code", and there is a number 3011. Was that your job code number, 3011?

A Yes, it was.

Q Now, on May 28, 1969, did something unusual

happen to you on your job?

A Well, that was the day I was terminated from Avco.

Q So the answer is "yes"?

A Yes.

Q Now, will you tell us what happened?

A Well, I received a memorandum at 9:00, approximately 9:00, specifying that I should -- that there will be a disciplinary hearing at 10:00 in Labor Relations.

Q Who did you receive the memorandum from?

A I believe it was Foreman Walter Hart.

Q But it was a foreman; is that right?

A A foreman.

Q A Company foreman? He was one of your supervisors?

A Yes.

Q Is this the memorandum you received? (Hands document)

A Yes. That is.

MR. SOSNOFF: I would like to offer this.

MR. COONEY: I have no objection to it, Your Honor. That is a copy of it, a Xerox copy. That is not the actual memorandum.

MR. SHEPRO: Also no objection, Your Honor.

MR. SOSNOFF: It is the only copy we have, Your Honor. I might say these exhibits are probably already in the file. I'm sure they are. They were offered on a motion for summary judgment, so if there are originals, they were probably offered on that motion.

(Copy of notice on disciplinary hearing received and marked Plaintiff's Exhibit 3.)

BY MR. SOSNOFF:

Q Tell us what you did, Mr. Holodnak, after you received Exhibit 3?

A Well, when I received the memorandum, I was curious as to what it meant, because it didn't specify what the reason for the disciplinary hearing was about, and around that time I believe my steward came around to ask. He also received a memorandum, a similar one, and he inquired of me if I knew what it was about, and I told him I didn't know either.

Q Who was your steward?

A My steward then was Frank Guida.

Q Then what happened?

A Well, since we both were unable to determine what the reason for the disciplinary hearing was about, I believe we got in touch with my committeeman, Joe Mesick.

Q Now, who is the superior -- is a committeeman a

union official?

A Yes, He is.

Q Who is the superior, the committeeman or the steward?

A Well, the committeeman is.

Q Well, what happened after you got in touch with Joe Mesick?

A Well, he didn't know what the reason for the termination or the disciplinary hearing was about either, and I believe he made an effort to determine the reason, and I believe they wouldn't tell him.

Q Well, did he tell you anything? Did he say anything to you about his efforts?

MR. COONEY: I am going to object at this point, Your Honor. Up to now, I haven't objected. The matter that they are now getting into has all been determined and been testified to already in the arbitration proceeding itself, and I think those facts have been found, and it is our claim and our position that the Court would be and is bound by the facts as found.

THE COURT: I overrule the objection.

MR. COONEY: Thank you, Your Honor.

BY MR. SOSNOFF:

Q Tell us what Mr. Mesick told you after he tried

to find out what the disciplinary hearing was about?

MR. COONEY: I am going to object to what he told him.

MR. SOSNOFF: He is a party to this action. He is a union official.

MR. COONEY: He is not a party to this action. He hasn't been sued.

MR. SOSNOFF: The union is a party. He is a union official. His utterances are binding on the union, I assume.

MR. COONEY: Your Honor, I object to it for the reasons stated.

THE COURT: I will overrule the objection.

THE WITNESS: Well, he said that when he tried to find out what it was about, they told him that we would find out at the hearing.

BY MR. SOSNOFF:

Q All right. Then what happened?

A Well, we waited out in the hallway.

Q Out in the hallway where?

A Of Labor Relations.

Q Who is "we"?

A That was Joe Mesick, Frank Guida and I.

Q And you were outside the Labor Relations Office of the Company; is that right?

A Yes.

Q And then what happened after you were outside?

A Well, we were waiting to go in and at that time my general foreman walked past us to go into the Labor Relations Office, and I believe Joe or I had asked what was the hearing about, and he said "You'll find out." and went into the office, and we stayed out until it was about 10:00 when we were called into the office.

Q All right. And that was you, Guida and Mesick; is that right?

A Yes.

Q When you got in, who did you find there?

A Well, there was William Ashlaw and Mato Gavin.

Q Tell us who they are?

A Well, William Ashlaw is the Labor Relations Chief. Mato Gavin is an employee in Labor Relations.

Q Could you spell that for the stenographer, please?

A M-a-t-o G-a-v-i-n. And there was another individual sitting in the background not around the table by the name of John Foster who was from the Security Department.

Q Of Avco?

A Of Avco.

Q Anyone else in there?

A That's about it. Plus the three of us.

Q All right. Will you tell us what was said at the meeting?

A Well --

MR. COONEY: Well, I am going to object, Your Honor, as to what was said at the meeting. I don't want to keep objecting, but the basis for the objection is that this is part of the arbitration record. It is before the Court.

THE COURT: You will have a continuing objection on that score.

MR. COONEY: Thank you very much, Your Honor.

MR. SHEPRO: May the union also without repetition be noted for the same reasons, Your Honor?

THE COURT: All right.

BY MR. SOSNOFF:

Q Tell us what was said at the meeting?

A William Ashlaw confronted us with the Aim News Letter. He placed it on his desk, and then he turned it to Page 14 and 15 in which my article was published, and he asked me if I am the Michael Holodnak who had written this article, and I told him I was. And then he asked me if I adhered to the philosophy of the article, the tenor and philosophy of it, and I told him I did. Otherwise, I would not have written it.

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And then he pointed out to me -- to us that this was slanderous and it was in violation of Company Rule No. 19 which is a lengthy thing that covers slander, and I can't quote it at the moment, but --

Q All right. Why don't you stop at this point. Is this the News Letter which I am now handing you that Ashlaw referred to when he was talking to you?

A That is the one.

MR. SOSNOFF: I would like to offer the entire News Letter in evidence, Your Honor, and with specific reference to Pages 14 and 15 that contain the Holodnak article.

MR. COONEY: Well, I object to the whole article going in. I don't think it has any materiality or relevance. I have no objection to the particular article going in evidence. I don't have any objection to this whole book going into evidence before the Court as long as it is understood by the Court --

THE COURT: Well, it is the best way of showing what kind of a publication it was, and I will receive the whole exhibit for that purpose, and, of course, particularly Pages 14 and 15.

MR. SMEPRO: No objection.

(Copy of News Letter received and marked Plaintiff's Exhibit 4.)

BY MR.SOSNOFF:

Q Now, I think you told us, Mr. Holodnak, that Mr. Ashlaw referred to plant conduct rules when he was talking to you, particularly Rule 19; is that right?

A Yes.

Q I want to show you this Xerox copy of the document and ask you whether these are the plant conduct rules at Avco that were in effect in 1969 to which Mr. Ashlaw referred?

A It is.

MR. SOSNOFF: I would like to offer this copy of the plant conduct rules in evidence, Your Honor.

MR. COONEY: No objection, Your Honor.

MR. SHAPRO: No objection.

(Copy of Plant Conduct Rules received and marked Plaintiff's Exhibit 5.)

BY MR. SOSNOFF:

Q Now, I think you were telling us that Ashlaw asked you whether you subscribed or endorsed the statements made in the article; is that right?

A Yes.

Q And will you go on now, and complete what happened

in that room that day?

A Well, he quoted several paragraphs or sentences, and I think he was very upset over the sentence or paragraph referring to wildcat strikes, and the way he brought it out was that I endorsed wildcat strikes, but I think in the way I wrote it in the paragraph it just -- an indication that wildcat strikes are just in the background, but I never thought that they should be ever used.

Q Just tell us --

MR. COONEY: I object.

BY MR. SOSNOFF:

Q Tell us what Mr. Ashlaw said and not your reservations about what he said or about what you wrote. Just tell us what happened in that room, not what you think. Okay?

A Well, he read several of these paragraphs, and then he asked me if I agreed with them. I said yes, I did. Then he said -- I think he repeated the fact that the Company could not countenance this kind of philosophy of whatever and said that the Company was asking for a termination on the basis of Rule 19, and I think Joe Mesick at that point -- well, no. Before that. We went out. Joe Mesick requested a recess so we could find out what the News Letter was all about because no one had seen it at that point. So we adjourned out in the hallway where Joe and Frank Guida had an opportunity to read it,

to read that News Letter or the article that I had written, and Joe after reading it said "Well, I don't see anything wrong with the article.", although he did disagree with me on the paragraph where I'm a bit critical about the committeemen. It's general criticism. And outside of that, that was the only statement he made was that he didn't agree with that one little aspect of it and another committeeman happened to walk by at that point by the name of Paul DeBernardo.

MR. COONEY: Your Honor, I object to this. This is outside the room, and I don't see how that is relevant or material to this case and why it should be admissible in this trial.

MR. SOSNOFF: The union is a party to this action, Your Honor. The union is a party to this action.

THE COURT: But you haven't identified Bernardo. Does he have some connection with the union?

MR. SOSNOFF: He said he was a committeeman.

THE COURT: Oh, all right.

MR. COONEY: He was another committeeman, Your Honor, but he had nothing to do with this matter at all. He just happened to be walking by according to his testimony.

MR. SOSNOFF: We haven't heard what he has

to say. There is no jury here.

THE COURT: What is the relationship of this committeeman to anything which the union might have done?

MR. SOSNOFF: He simply commented on the article, Your Honor.

THE COURT: Well, I will sustain the objection.

BY MR. SOSNOFF:

Q All right. Will you go on? You were outside the meeting room and then what happened?

A Well, then we went back into the hearing room.

Q All right. And --

A And I guess Ashlaw continued to insist on the termination and Joe Mesick asked if there could be a lesser charge brought against me instead of a termination, and Ashlaw said very forcefully, "Absolutely not."

Then there were a lot of small details where -- oh, I think at one point, yes, Ashlaw had inquired of John Foster if Aim News Letter was on the Attorney General's subversive list and John Foster answered no, it was not, and we went back to the tenor of the meeting in which he still insisted on the termination.

Then he called my foreman to come down and bring my jacket from my department, and they requested my identification

badge, which I removed from my collar and handed to Mato Gavin or Gilbert Palmer who was my General Foreman, and at that point, my steward, Frank Guida, had written a grievance objecting to my termination which I signed at that point and when my jacket came -- when the foreman brought my jacket, I was escorted out of the plant, and that was the end of the termination.

Q You mean you were terminated?

A I was terminated. Yes.

Q And you haven't worked for Avco since?

A Yes.

Q I am now going to show you this Xerox document and ask you whether this was the grievance form that was prepared for you and whether that is a copy of your signature on the form?

A That is the one.

MR. SHEPRO: Union counsel has no objection, Your Honor.

MR. COONEY: No objection, Your Honor.

(Copy of grievance form received and marked Plaintiff's Exhibit 6.)

BY MR. SOSNOFF:

Q Mr. Holodnak, who pubishes the Aim News Letter?

A Well, it's a committee of people who had been sponsoring a candidate for Congress by the name of Bob Cook.

Q What is the committee called? Did that have a name?

A The American Independent Movement.

Q Did the News Letter have an office?

A An office?

Q An office somewhere, if you know?

A I think there was one on Orange Street.

Q Where, what city?

A In New Haven.

Q Was the News Letter distributed free of charge or was it sold at a price?

A It was sold at a price.

Q Did you receive any money for the article that you had published in the News Letter?

A No.

Q Did you at any time hand out or circulate copies of the article that you published in a News Letter at the Avco plant?

A No.

Q Did you ever show the article to anyone at the Avco plant either before or after it was published?

A Before it was published, but not after.

Q Who did you show it to before it was published?

A Well, to approximately a dozen fellow employees.

Q What was your purpose in showing it to them?

A Well, I was trying to determine whether I was reflecting accurately, as accurately as I possibly could, the feeling of the cross section of the employees.

Q Did you show them the finished article that appeared in print or a draft of that article?

A Just a draft.

Q Do you know how Avco -- withdraw that.

Did you ever give Ashlaw a copy of your article?

A No.

Q Do you know how Ashlaw received a copy of the article?

A No.

Q Do you know whether Avco subscribed to the News Letter?

A I don't know.

Q Now, after your termination on May 28th, was that the last day you were ever in the Avco plant again?

A Yes.

Q Now, following your termination, did you consult with any attorney in Connecticut about the termination?

A Yes. I did.

Q Who did you speak to?

A Attorney George Johnson.

Q And did you receive some advice or information from him?

A Yes. I did.

Q Now, am I correct in saying that in your collective bargaining agreement with Avco, under Article 4 of the agreement there are various steps in the grievance procedure; is that correct?

A Yes.

Q Now, you have been terminated so that your grievance was a discharge grievance; is that right?

A Yes.

Q And did the meeting you had with Ashlaw and the other Company officials on May 28th which you have described constitute one of the steps in the grievance?

A Yes.

Q What step was that?

A That was Step Two.

Q All right. Now, --

THE COURT: Would this be a convenient time to take a brief recess?

MR. SOSNOFF: Sure. It would be fine, Your Honor.

THE COURT: We will take a brief recess.

(Court recessed at 11:35 A.M. and reconvened at 11:50 A.M.)

BY MR. SOSNOFF:

Q Mr. Holodnak, going back for a moment, prior to

receiving Plaintiff's Exhibit 3 which was the notice of a hearing with Ashlaw, had you received any prior notice or indication of any kind from Avco that disciplinary action against you was being considered by the Company for publication of the article?

A None.

Q Now, did there come a time when you were informed that the third step of the grievance procedure had been completed?

A Yes.

Q Were you present for the third step of the grievance procedure?

A No. I was not.

Q When were you informed, if you remember, that the third step had been completed?

A I don't remember the exact date, but it was several weeks after my termination.

Q Who informed you?

A My committeeman, Joe Mesick.

Q And what did he tell you?

A Well, he told me that the Labor Relations had remained adamant on their position and refused to change their mind about my termination. So the union voted to submit my grievance into arbitration.

Q When was that arbitration held?

A That was held on July 17, 1969.

Q Did you receive notice before July 17th that the arbitration was scheduled?

A Joe Mesick called me up about three days prior to it.

Q And what did he tell you?

A Well, he told me that the arbitration would be held at Howard Johnson's on Huntington Road in Stratford at 10:00 on the 17th of July.

Q Now, were you represented at the arbitration by an attorney?

A Well, the union had an attorney.

Q Were you represented by him at the arbitration?

A Yes.

Q Who was that attorney?

A Edward Burstein.

Q And I think you have indicated he was the union counsel?

A Yes.

Q And did you meet Mr. Burstein at any time before July 17th?

A Never.

Q Did you go to the Howard Johnson Motor Inn on July 17th?

A Yes.

Q What time did you get there?

A I think it was around 9:00.

Q Incidentally, what time was the arbitration scheduled for, if you recall?

A 10:00.

Q Who was there -- withdraw that.

Was Mr. Burstein there when you got there?

A No. He was not.

Q Did Mr. Burstein ultimately arrive?

A He did arrive after quite sometime. I don't remember the exact time.

Q Well, was it before 10:00?

A Oh, before 10:00, yes.

Q How much before?

A It wasn't very long. Maybe ten, fifteen minutes or so.

Q Now, when he arrived, did he introduce himself to you?

A Yes.

Q Was that the first time you ever met Mr. Burstein?

A Yes.

Q Was that the first time you ever spoke to Mr. Burstein?

A Yes.

Q Had anyone from the union previously prepared you for the arbitration?

A No, not for the arbitration.

Q Had you spoken to anyone at the union about what you would be doing at the arbitration before you got there?

A Well, I spoke -- well, George Johnson had been calling.

Q Anyone from the union?

A Had I spoken to anyone?

Q Yes. Had you before you got there?

A I don't recall speaking to anybody. No.

Q All right. Will you tell us what transpired between you and Mr. Burstein after he arrived at Howard Johnson Motor Inn?

A Well, I think the first thing that he did was to acquaint himself with the article that I had written.

Q He read the article in your presence?

A Yes. He read it in my presence.

Q All right. And then?

A Well, he seemed rather upset over it and said something to the effect --

MR. COONEY: Well, I am going to object, Your Honor, to anything Mr. Burstein said. Mr. Burstein is deceased. He is not a party to

this lawsuit, and I claim that it is hearsay as to anything he says, and it is not admissible under the statute.

MR. SOSNOFF: I don't know what statute is being referred to, Your Honor, but I disagree with that. Mr. Burstein was counsel for Mr. Holodnak. He was counsel for the defendant union and, of course, what he said is material and certainly not hearsay. He is a principal in this action. He was the union attorney and as the union attorney, represented Mr. Holodnak in the arbitration.

THE COURT: Well, the union is a party here, isn't it?

MR. SOSNOFF: Sure. Yes, Your Honor.

THE COURT: I will receive it.

BY MR. SOSNOFF:

Q Will you tell us what Mr. Burstein said?

A Well, he said that this -- I know that he said that "If I were the union, I wouldn't defend you on this." But in view of the fact that there will be repercussions for other individuals if they also write something so other people could get fired if he doesn't defend me. So on that basis, he grudingly went along with the idea of defending me.

Q Did he say anything else to you that you recall?

A Well, he did specify something about the Aim organization being subversive or something to that effect. There were leaflets that were passed out in the plant, I think two different leaflets prior to my termination by the Aim Committee, and he indicated that those leaflets sounded subversive to him and that --

Q Can I clarify that he told you that the Aim organization, the American Independent Movement had passed out leaflets at the Avco plant and he considered them subversive?

A Yes.

Q Did he say anything else?

A Well, he said something -- he defended the Avco -- not Avco, but corporate executives or corporate stockholders as entitled to the profits. Well, the leaflet that he was referring to indicated the excess profits being made by certain corporations, and he defended these corporations by saying that they are entitled to them because they make vast investments in these things, and I told him that workers -- I said that a corporation has vast loopholes in which to not pay taxes where workers have to pay their full taxes.

Q Did Mr. Burstein show you the leaflets he was complaining about?

A Yes. I think he did.

Q I am going to hand you two leaflets and ask you

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and tell me whether you know from your knowledge these are copies that Burstein had when he spoke to you?

A Yes. They are.

Q Are they exact copies?

A Yes.

Q These are leaflets that you also saw distributed at the plant?

A Yes.

MR. SOSNOFF: I offer them, Your Honor.

THE COURT: We will mark them for identification. I don't think they should be received now. It takes us a little far afield.

(Copy of leaflet on "Avco's Millions" marked Plaintiff's Exhibit 7A for identification.)

(Copy of leaflet on "Taxes" marked Plaintiff's Exhibit 7B for identification.)

BY MR. SOSNOFF:

Q Mr. Holodnak, aside from your discussion with Mr. Burstein regarding the leaflets that have just been marked for identification, did you talk to him about anything else?

A Well, he asked me if I --

MR. COONEY: Your Honor, may I have the same objection regarding what Mr. Burstein said that I made before without having to object each time?

THE COURT: Yes.

MR. COONEY: Thank you, Your Honor.

MR. SHEPRO: The same with the union counsel, Your Honor.

THE COURT: Yes.

THE WITNESS: Well, he asked me if I was willing to let him defend me, and I had no other alternative but to have him because my own counsel -- I said "Yes".

BY MR. SOSNOFF:

Q Do you know whether George Johnson to whom you had previously spoken had made a request to Mr. Burstein to be present at the hearing?

A Yes.

Q Do you know whether Mr. Burstein ever responded to Mr. Johnson in relation to that request?

A He never responded, to any of his correspondence or telephone calls.

MR. COONEY: Well, Your Honor, I am going to object to that. I don't think that is anything that the witness heard Mr. Burstein say. I would ask that it be stricken. They have got a deposition from Mr. Johnson that I understand is going to be used at the trial.

MR. SOSNOFF: That is true. That will be

covered in Mr. Johnson's testimony.

THE COURT: Who was Johnson the attorney for?

BY MR. SOSNOFF:

Q Well, who was Johnson the attorney for?

A Aim.

MR. SOSNOFF: He was the Aim attorney.

THE COURT: Who?

MR. SOSNOFF: The Aim News Letter, Your Honor. And he was also Mr. Holodnak's original attorney in this case. He has now left Connecticut and we took it over from him, but he initiated this suit.

BY MR. SOSNOFF:

Q Now, Mr. Holodnak, did Mr. Burstein -- withdraw that.

Have you told us everything you recall of your conversation with Mr. Burstein the morning of July 17th before the arbitration hearing began?

A I can't think offhand of anything else.

Q Now, did Mr. Burstein in talking to you before the arbitration hearing discuss with you the questions he would be asking you at the hearing?

A Oh, no. We never discussed any questions that would be asked.

Q Did he discuss with you the testimony that you would be giving?

A No.

Q Did he tell you that he intended to call you as a witness at the hearing?

A No. He didn't say that either.

Q Did he say anything at all to you about --

A Oh, I'm sorry. He might have said something about me being a witness, but I'm not clear about whose witness or what that meant, but he might have mentioned that I would be called as a witness.

Q Did he say anything to you about the hearing procedures or tactics he intended to follow in the case?

A None.

Q And how long did that meeting with Mr. Burstein last on July 17th?

A Well, it couldn't have been more than ten, fifteen minutes.

Q Now, after talking to Mr. Burstein, then what happened?

A Well, we adjourned to the hearing room.

Q Was that in the Howard Johnson Motor Inn?

A Yes.

Q And then did your arbitration hearing begin?

A Yes.

Q And it was presided over by Arbitrator Burton Turkus; is that right?

A Yes.

Q I am going to show you what proports to be a transcript of that arbitration hearing. It is a total of 160 pages, and would you look at it and tell me whether this is an accurate transcript of what transpired at the hearing? (Hands document)

A Yes. It is.

MR. SHEPRO: No objection, Your Honor.

MR. COONEY: Your Honor, I have no objection. I could point out to the Court, I believe, there's one of these already in the file, in the record.

MR. SOSNOFF: There is.

MR. COONEY: That was submitted with the motions for summary judgment, if that is of any assistance or if you want both of them in the record, it doesn't matter to me.

MR. SOSNOFF: I think, Your Honor, that every exhibit that has been offered so far was also offered on the motion for summary judgment.

THE COURT: Well, we better mark it.

(Copy of transcript of Grievance Hearing received and marked Plaintiff's Exhibit 8.)

* * *

copy that is in the Court file?

MR. SOSNOFF: I would prefer to have the copy in the Court file, and then we would have no witness notations on it. Right, Your Honor.

THE COURT: Can we go ahead meanwhile?

MR. SOSNOFF: Sure. I would be glad to, Your Honor.

BY MR. SOSNOFF:

Q Now, Mr. Holodnak, under standard arbitration procedures in discharge cases, I take it as reflected in the transcript that the company proceeded to put in it's case first; is that right?

A I didn't get that last part.

Q In the arbitration procedure, the arbitrator required the company to put it's case in first; is that right?

A I believe it is.

Q If you know?

A As far as I know, yes.

Q Now, who was called as the company's first witness?

A I was.

Q And how long were you on the witness stand?

A Well, I was on the stand during the entire period of the arbitration hearing except for the period of recess and during the time when three or four witnesses were

called briefly.

Q And were you on the stand the whole morning of the arbitration?

A Yes.

Q And part of the afternoon?

A Yes.

Q And how long did the testimony of the other witnesses take? Do you recall?

A Well, they were relatively brief.

Q Well, can you estimate their time, if you can?

MR. COONEY: Well, Your Honor, I object. What difference does it make how long the witnesses took to testify?

THE COURT: Well, Exhibit 8 will show this, will it not?

MR. SOSNOFF: Yes. It will.

THE COURT: Something of this sort, if you wish to, I should think you could simply state it to the Court because you are describing an exhibit.

MR. SOSNOFF: Fine. The exhibit will reflect the testimony of each witness.

BY MR. SOSNOFF:

Q Now, do you know whether -- withdraw that. Do you know whether the union filed a brief on your

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MR. SOSNOFF: Yes. I am introducing it.

(Copy of Union Brief received and marked Plaintiff's Exhibit 9.)

BY MR. SOSNOFF:

Q Mr. Holodnak, sometime after July 17th, did the arbitrator issue his award in the case?

A Yes.

Q I show you this Xerox document entitled "Award" and ask you whether this was the award of Arbitrator Burton Turkus issued in your case?

A Yes. It is.

Q And that is dated what date, Mr. Holodnak?

A On November 18, 1969.

Q And is that on or around the time you learned about the award?

A No. I learned about it several days later.

MR. SOSNOFF: I would like to offer the Arbitrator's Award in evidence, Your Honor.

MR. SHEPRO: No objection.

MR. COONEY: Avco has no objection, Your Honor.

(Copy of Arbitration Award received and marked Plaintiff's Exhibit 10.)

BY MR. SOSNOFF:

Q Now, during the years you worked at Avco, was

it a common occurance for individual employees or for the union to distribute circulars to other employees?

A Yes. It was.

Q I'm going to hand you a sheaf of documents and ask you to describe these to His Honor. What are they?

A These are leaflets that had been distributed at the plant gates.

Q During the years you worked at Avco?

A During the years that I worked at Avco, yes.

Q And were there other leaflets -- withdraw that. Are these leaflets that you happened to save?

A These are the ones that I happened to save, yes.

Q Were there other leaflets distributed too that you don't have copies of?

A Oh, there were many. There were literally hundreds.

Q Are these leaflets typical of the leafleting that goes on at the plant?

A Yes. They are typical.

Q And had leafleting been going on throughout the entire nine years that you worked at Avco?

A Yes. They were.

Q Now, you didn't distribute your article at the plant, did you?

A No. I didn't.

Q By distribute, I mean hand it out to people, let them keep copies.

A No.

Q Did you give away copies of your article to anyone by the way?

A No. I didn't.

MR. SOSNOFF: I would like to offer these leaflets in evidence.

MR. COONEY: While I am looking at them, Your Honor, may I inquire what the purpose of the offer is?

THE COURT: Yes.

MR. SOSNOFF: Well, you have an employee here who has been fired for publishing something that was never even circulated in the plant except that drafts were shown to a dozen employees perhaps and yet when we propose to show -- and fired under a rule that proports to prohibit malicious leafleting, etcetera. What we are attempting to show by introducing this sample of leafleting at the plant is that there is a long history tradition and custom at Avco for employees to exchange views through circulars, through publications and some of these publications

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identification.

(Copies of leaflets distributed at the gate received and marked Plaintiff's Exhibit 11.)

BY MR. SOSNOFF:

Q Mr. Holodnak, before your article appeared in the Aim News Letter of, I believe, May 15th which was Exhibit 4 in evidence, had you ever published any earlier articles at Aim?

A Yes. I did.

Q And did your earlier article deal with something that happened at Avco?

A Yes. It did.

Q I show you this document which is an Aim News Letter and refer you to Page 7 of that News Letter and ask you whether this is the earlier article you published at Aim?

A Yes. It is.

MR. SOSNOFF: I would like to offer this in evidence.

Q Incidentally, Your Honor, if I may, in connection with that, was anything ever said to you by any superior about the earlier article that you published in the Aim News Letter?

A No.

MR. COONEY: May it please the Court, the defendant Avco objects to this article written by plaintiff because it fails to see that it has

any materiality bearing on the issues involved in this case, and I don't see what relevance it can have in the issues involved in this case. He may have written another article and there may have been no objection to it, but that is not going to be of assistance to the Court in my opinion in this case.

MR. SOSNOFF: Again, Your Honor, as with the leaflets previously offered, I am just trying to set the background. This witness, the plaintiff here, has previously written for the Aim.

THE COURT: Isn't that fact enough?

MR. SOSNOFF: Yes. I suppose it is, Your Honor.

THE COURT: Then the offer is withdrawn?

MR. SOSNOFF: The offer is withdrawn, Your Honor.

BY MR. SOSNOFF:

Q Mr. Holodnak, is the Aim News Letter still in business?

A No. It is not.

Q Is there a successor publication for it?

A Yes. There is.

Q And what is the name of that?

A It's Modern Times.

Q And from time to time, do you publish articles in Modern Times?

A Yes. I do.

Q Up until today; is that right?

A Yes.

Q Have you done any other writing, Mr. Holodnak?

A Yes. I do.

Q Could you just tell us briefly what you have done?

A Well, I have written several novels and short stories and many articles.

Q Do you write for remuneration?

A Well, no. I don't.

Q Now, since you were terminated on May 28th, 1969, in Avco, have you been employed?

A Not on a regular basis. No.

Q Have you been employed at all?

A No. I haven't. Just on a teaching staff.

Q When did you start teaching?

A That was last month.

Q So up until last month, you haven't had any work; is that right?

A That is correct.

Q And now you are teaching two hours a week; is that right?

A Yes.

Q And you are not paid for that?

A Right.

Q I think you told us at the time you were fired, at Avco, you were in Labor Grade 5, you were small parts A inspector, and you were earning $3.73 an hour; is that right?

A Yes.

Q With cost of living increments?

A Yes.

Q Now, Exhibit 1 which is the union contract expired on April 15, 1970; is that right?

A Yes.

Q And since that time, have new contracts been negotiated --

A Yes.

Q -- between the Company and the union?

A Yes.

Q And did those contracts make provision for your job classification, labor grade 5?

A Yes.

Q Small parts A inspector?

A Yes.

MR. SOSNOFF: Will Your Honor excuse me a moment?

Q How many contracts had been negotiated? Do you

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MR. SOSNOFF: I would like to offer this.

MR. COONEY: No objection, Your Honor.

MR. SHEPRO: No objection.

(Copy of Union Agreement from 1973 to 1976 received and marked Plaintiff's Exhibit 13.)

BY MR. SOSNOFF:

Q Mr. Holodnak, have you had any earned income at all since your dismissal on May 28, 1969?

A No. I did not.

Q Have you at my request made a calculation, the lose in earnings you have experienced as a result of your dismissal, assuming you had continued to work for Avco since May 28, 1969, worked an average forty hour week and put in average overtime? Have you made the calculation?

A Yes. I did.

Q All right. Could you tell us what your lost earnings are from May 28, 1969 until today and indicate how you arrived at that figure?

A Well, based on a forty hour week from 1969 until 1974 of April, it was $43,765.36, but by adding the average overtime which was $13,247.48, the total wage lose was $57,012.84.

Q Now, during this time --

THE COURT: How many weeks a year did you compute?

THE WITNESS: Fifty-three.

* * *

A Yes. I did.

MR. COONEY: I am going to object to that, Your Honor. It is one thing to have this witness testifying as to what he might have made had he continued to have been employed there and even to let him go so far as to testify as to his estimate as to how much money he would have lost as to his illness, but I think the whole area is getting into a whole area of speculation on the witness' part.

THE COURT: I will receive it.

BY MR. SOSNOFF:

Q Will you tell us what you were to receive by your calculations in disability benefits?

A The total would have been $2,545.00.

Q All right. And have you at my request calculated total lost wages in which you deduced lost earnings for the time you were incapacitated and added back on anticipated disability benefits?

A Yes. I did.

Q And what was the final figure you get as to your lost earnings by your calculations since May 28th, 1969 to the present day?

A Well, the total adjusted wage lose is $54,160.58.

Q Now, George Johnson originally filed the suit in this case on your behalf; is that right?

A Yes. It is.

Q Did you have any retainer arrangement with Mr. Johnson to represent you?

A Well, he took it on a contingency basis on the premise that --

Q Well, he took it on a contingency?

A Yes.

Q So you paid Mr. Johnson no fee, is that right --

A Yes.

Q -- for the time he has handled this suit for you; is that right?

A Yes.

Q Then I succeeded Mr. Johnson sometime in 1973; is that right?

A Yes.

Q And have you paid me or my law firm anything for representing you?

MR. COONEY: Well, I am going to object to that. What relevance does that have to this case?

MR. SOSNOFF: There is a claim for counsel fees, and I just want the record to show the basis of the retainer arrangement. It is very material

to the counsel fee claim in this case.

MR. COONEY: Well, I object to it as to the defendant Avco. I don't think that we are liable to pay Mr. Sosnoff any counsel fees period.

MR. SOSNOFF: Well, I guess that will be up to the Court after the outcome of this case.

MR. COONEY: I don't see what the admissibility of this evidence is.

THE COURT: Well, if there is a claim for counsel fees as you say --

MR. SOSNOFF: Yes. There is.

THE COURT: -- we will pass upon that later, but meanwhile, I think it is proper to take the evidence.

BY MR. SOSNOFF:

Q I think the last question was whether you have paid me or my law firm any money for representing you so far in this case?

A Yes. I did.

Q All right. What did you pay us?

A $265.72.

Q Now, was this a fee you paid us or was this reimbursement for disbursements we had made?

A This was reimbursement.

Q So you haven't paid us any fee, have you?

A No.

Q We are continuing to represent you on the same contingency arrangement Mr. Johnson had with you?

A Yes.

Q And you have reimbursed us for certain out of pocket disbursements we have incurred?

A Yes.

Q And how much is that amount?

A $265.72.

Q And do you remember what the reimbursement was for?

A Yes. There was George Johnson's deposition which was $98.32, Beverly Warren's deposition was $113.50.

Q That is the Vice President of Avco?

A Yes. It is.

Q Yes.

A Then there was $22.00 for Beverly Warren's subpoena, $22.00 for John Fernandez subpoena, 5.40 for the Federal Marshal, and 4.50 for Xeroxing.

MR. SOSNOFF: I have no further questions of this witness.

MR. COONEY: May it please the Court, do you want me to start my cross examination now?

THE COURT: Well, no. This would be a good time to recess. We will reconvene at ten minutes

of two, 1:50. Is that convenient for everybody?

MR. SOSNOFF: Yes, Your Honor.

MR. COONEY: Yes, Your Honor.

(Whereupon, Court recessed at 12:45 P.M. and reconvened at 1:55 P.M.)

MR. COONEY: May it please the Court, we are ready to proceed.

CROSS EXAMINATION

BY MR. COONEY:

Q Mr. Holodnak, this morning you testified on your direct testimony that you had a clean record at the Avco Corporation?

A Yes. I did.

Q And I believe you also testified that any disciplinary proceeding that was brought against you was sustained in your favor; is that correct?

A Yes.

Q I ask you to look at these documents and tell me if you can identify them?

A Yes. I can.

Q All right. Did you look at all of them, Mr. Holodnak, or just the first one?

A Yes.

Q And what are those documents, Mr. Holodnak?

A These are verbal warnings.

* * *

A Yes. I did.

Q And it said in this affidavit, "Prior to my dismissal, I had an unblemished employment record at Avco."; is that correct?

A Yes.

Q And it further stated that "No disciplinary action against me by the Company had been sustained."; is that correct?

A Yes, sir.

Q Now, I show you Defendant's Exhibit A in evidence and call your attention to Warning No. 1. It indicates that you received a warning back in 1969 --

A Yes.

Q -- April 9th, concerning the fact that you weren't clocking in at the right clock; is that correct?

A Yes.

Q On December 6th of 1968 --

THE COURT: That was withdrawn, wasn't it?

MR. COONEY: Yes, Your Honor. I was going to get to that part of it.

Q That resulted from a matter that took place on December 6, 1968; is that correct?

A Yes.

Q And is the statement in the first paragraph of the document entitled "Disciplinary Warning" and dated December 6th, 1968 and generally relates to the fact of what

clock you were supposed to be checking into; is that correct?

A Yes.

Q And it indicates that you refused to carry out the instructions of the foreman; is that correct?

A Yes.

Q In the warning is a supervisor's report dated June 14, 1963 with the information relating to your not working at a particular time during the day, correct, in that warning?

A I left the plant at 11:00 A.M., yes, that is correct.

Q And you did it without a medical pass?

A Well, the warning, later on we had a grievance on it. Is there a grievance related to that warning?

Q What was the recommendation?

A "Recurrent violation of Company rules will result in more severe disciplinary action."

Q So you just got a warning; isn't that correct?

A Yes. Just the warning.

Q Mr. Holodnak, the date of this warning and the prior warning which was withdrawn eventually, you were familiar with the Company rules at this time; isn't that correct?

A Yes. I was.

Q And you had seen these Company rules posted in

different places in the plant; isn't that correct?

A Yes.

Q July 2nd, 1963, did you receive a warning related to carelessness as far as drilling a particular part for the Company?

A Yes.

Q And what was the recommendation on that?

A "Recurrance of carelessness of this type will result in more severe disciplinary action."

Q On January 22, 1962, what did you receive a warning for on that day?

A For reading -- well, I was in the john at the time and I was there on legitimate business and at the same time I was reading a pamphlet or a magazine, I think, that was in the men's room, and I was observed reading that and I received a verbal warning for that.

Q In addition to a verbal warning, what happened to you?

A Oh, well, I was suspended without pay for three days effective January. This was in 1962. Yes.

Q Isn't that correct?

A Yes.

Q You were suspended January 4th, 5th and 6th, 1962; isn't that right?

A Yes. Three days.

Q On the supervisor's report dated 1-16-62, did you also receive a warning as a result of the type work you were doing?

A Yes.

Q And what was the nature of that warning? Did it deal with the fact that you were reporting that you could not meet the standards that had been set for your type of job?

A Yes. The standards were very high on that job, and I just returned from sick leave. I was unable to keep up on that job. Yes.

Q And you received a warning?

A I received a warning.

Q What was the nature of the recommendation that you got at that time?

A Well, if I continued to fail to meet my minimum production standards, more severe disciplinary action will be taken.

Q As a result of the warning set forth in the supervisor's report, dated 4-5-61, relating to a violation of the Company rules, were you entering more work as being done on your worksheets than was actually completed?

A Yes, I was at that time.

Q And as a result of that, what recommendation was made?

A I was given seven days suspension.

Q And in addition to that, were any other recommendations made?

A "Any recurrance will result in immediate termination."

Q On 7-19-61, what was the nature of the warning you received in this supervisor's report?

A Well, this was again for the same thing. I was in the men's room and I was observed reading a book, which is generally done in the men's room, but just that I got a warning for it, a disciplinary warning. That was a verbal one.

Q And it indicated that on 7-18-61 you were observed in the men's room reading a book; is that right?

A Yes.

Q And on 7-13-61, you were verbally warned that this was a violation of the Company rules?

A Yes. I was.

Q Were you also told that any recurrance would also result in more severe discipline?

A Yes. I was.

Q So that when you stated that you had an unblemished employment record at Avco, that wasn't correct, was it?

A It was because warnings are given on the basis of a yearly term. After a year, the warnings are taken out

of the record or supposedly. As the shop steward, I was familiar with that procedure.

Q You were a shop steward?

A Yes. I was.

Q For how long a period of time?

A For four years.

Q And as shop steward, you were familiar with the Company rules; isn't that correct?

A Yes. I was.

Q And as shop steward, you had filed many grievances on behalf of your area and for yourself; isn't that correct?

A Yes.

Q And is a shop steward an officer of the union?

A Yes.

Q So you are familiar both as a union man and as shop steward with the grievance procedure and the contract of employment that were in existence when you worked at the Avco Corporation?

A Yes.

Q But when you prepared the affidavit and signed it under oath and when you testified here today that you had a clean employment record, you knew, Mr. Holodnak, did you not, that you had been suspended on two occasions and had received a number of warnings for violating Company rules, in

the past; isn't that correct?

A Yes. I did.

Q Now, Mr. Holodnak, the Aim article that you wrote and had published was the article that you were subsequently dismissed for, isn't that correct, or discharged for by the Avco Corporation?

A Yes.

Q And you testified today on direct examination that Mr. Ashlaw, a Company supervisor, asked you at the arbitration -- not at the arbitration hearing, at the Company hearing, the disciplinary hearing, whether you adhered to the views set forth in that article; isn't that correct?

A Yes.

Q And you testified that you did; isn't that right?

A Yes.

Q And as a matter of fact, you still adhere to those views today; isn't that correct?

A Yes.

Q You were familiar when you wrote that article with the fact that the contract contained a no strike clause; isn't that correct?

A Yes, sir.

Q And in that article you made reference to the fact that it was good to have in your arsenal of weapons the

wildcat strike, isn't that correct?

MR. SOSNOFF: Excuse me. I object to that, Your Honor. I think if we are going to refer to portions of the article, the precise language of the article should be referred to other than counsel's characterization of it.

THE COURT: Well, if at any time the witness would like to see the exact words in light of the pending question, of course, he may ask to see it. Otherwise, I think this is perfectly proper cross examination.

BY MR. COONEY:

Q Do you recall the question, Mr. Molodnak?

A Yes. I recall the question.

MR. SOSNOFF: Would you like to see a copy of the article?

MR. COONEY: I am going to object, Your Honor.

THE WITNESS: Yes. I would like to see the entire contents, the paragraph.

MR. COONEY: May we have that exhibit, the article, the News Letter. It's No. 4, I believe.

BY MR. COONEY:

Q Is that the article you wrote on Pages 14 and 15,

I think it is, of Exhibit 4? (Hands document)

A Yes. It is.

Q Do you recall the question I asked you, Mr. Holodnak?

A What paragraph is that in now?

Q In that article, did you make a reference to wildcat strikes?

A Yes. I did make an oblique reference to it, not a direct one. I can't find it at the moment.

Q You can't find it in there at all?

MR. SOSNOFF: Why don't you take your time and just read the article until you can find it.

BY MR. COONEY:

Q Have you been able to find it?

A No. There is only one reference to it. It is a small sentence, and I can't find it in the total contents. Yes.

Q Have you found it now?

A Yes.

Q Does it start with the sentence "It is probably true that wildcat strikes..."? Is that where you are talking about?

A "It is probably true that wildcat strikes are not the answer." Yes. I begin qualifying my statement immediately. "But wildcat strikes wouldn't even be tempting if

we had a good, solid union that knows where it's at and that does not through the grievance procedure compromise away our rights." Yes.

Q Go ahead. Read the next sentence.

A "Yet it is comforting to have wildcats in our arsenal of weapons just in case."

Q That's what you wrote in that article; isn't that right?

A Yes.

Q And you adhered to those views in the disciplinary hearing when you were asked by Mr. Ashlaw whether you still held the same views; isn't that correct?

A The views are qualified here clearly in the entire paragraph. Yes. I adhere to it, yes.

Q And as a matter of fact, you testified at the arbitration hearing that you thought you had the right to have wildcat strikes; isn't that correct?

A I thought under the -- yes. Under the Constitution that individuals had that right.

Q And you were a shop steward in the union when you thought that at one time; isn't that correct?

A Yes.

Q And you discussed your views as set forth in this article or a draft article with at least twelve other employees of the Avco Corporation; isn't that correct?

A Yes.

Q And you were aware of the fact when you wrote this article that at least 20 to 22 employees had been discharged as a result of wildcat strikes; isn't that correct?

A Yes.

Q And you knew about that?

A Yes. I did.

Q And there had been a problem prior to your writing this article at Avco with wildcat strikes; isn't that correct?

A Yes. There was.

Q And as the union steward, you were fully aware of the effect that wildcat strikes had on the Company's operation; isn't that true?

A Yes. I did.

Q These wildcat strikes that had occurred prior to your writing this article adversely affected other employees at the plant; isn't that true?

A Yes. They did.

Q And these wildcat strikes affected the Company's products; isn't that true?

A Yes. They did.

Q Now, at the -- I will withdraw that.

The article that you wrote, Exhibit 4, contains some statements, doesn't it, that aren't correct and are not true?

A There were some maybe not quite accurate judgment, yes.

Q Did you write in the article, Exhibit 4, and you still adhere to this view today, that "The current course of moderation chartered by the Shop Committee is alienating and frustrating the membership to no end. 'We have to go easy on the Company or it will move out' our union officials warned and so dispite the fact that the Company has a stupid, incompetent, irresponsible management that has arrogantly sabotaged the grievance procedure, the union members must continue to kiss the Company's posterior for the privilege of living."

You wrote that, isn't that correct, and you wrote that in that article?

A Yes.

Q And you still think that is true today; isn't that correct?

A I haven't been there today, but it was true when I worked there.

Q When you wrote it, you thought it was true?

A During my years that I worked there, yes, it was true.

Q And you testified at the arbitration proceeding that you thought it was true; isn't that right?

A Yes. I did.

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Q Did you also write in that article, Exhibit 4, in part that "We mustn't forget the Company's sacred laws forbid morality."?

A Yes.

Q And that isn't true, is it, Mr. Holodnak?

A Well, when I worked there, it was true.

Q Did you write in Exhibit 4, the Aim article that "Anyway, Avco like all large corporations has become sophisticated in its underhanded union busting tactics which run the gamit from sweet talk giving special privileges to Company orientated candidates (such as allowing them to campaign on Company time), using rats (stool pigeons) to making it miserable for and sometimes firing the really dedicated unionist, and last but not least, buying off whatever other effective opposition may be left with a foremanship."?

A Uh-huh.

Q And when you wrote this article, you testified, I believe, at the arbitration hearings that you could not give a single instance in which the Company had bought off anyone; isn't that correct?

A I indicated that I would not name names.

Q Is that because you were unable to name names?

A No. I was unprepared to name names and I didn't want to name names at the time. That is true.

Q You are not prepared to name names today, are you?

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A Well, I could name names today.

Q Of people who were bought off from being dedicated union people; is that right?

A Well, not necessarily dedicated union people.

Q Well, isn't that what you wrote?

A Well, they -- let me see that paragraph. What paragraph was that in?

Q It's the paragraph beginning with "Anyway, Avco like all other large corporations...".

A Oh, that is in the middle of a paragraph. It starts in the middle of a sentence.

Q Have you found it there?

A Oh, yes. I see now. You started in the middle of a paragraph here. I have to find the middle.

Well, you see, if you bring it out to the entire paragraph, you will get the meaning of that paragraph rather than starting in the middle and bringing out a point that does not fit in properly with the content of the entire paragraph.

Q You are saying that I am taking this out of context then, it doesn't really say what it says?

A Well, it does say what it says, but I give a background of how I arrive at the conclusion.

Q And you were asked about this at the arbitration proceeding; isn't that correct?

A Yes. I was.

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Q You were asked a number of questions about it?

A Yes.

Q And for some reason or other, you were not prepared or you refused to give a single instance in which you could tell the arbitrator that the Company bought off any dedicated union leaders; is that correct?

A I was unprepared.

MR. SOSNOFF: Excuse me. Your Honor, if the sentence is read correctly, there is no suggestion that a dedicated unionist is bought off. The reference in the article is to other effective opposition that receives the foremanship, not the dedicated unionist. It really twists the context of the paragraph out of its meaning. There are references in the paragraph to dedicated unionists and other effective opposition, and the buying off is to the other effective opposition. I think that is the confusion here at the moment.

THE WITNESS: Yes. I see it now. Buying off whatever other effective opposition may be left with a foremanship.

BY MR. COONEY:

Q At the arbitration proceeding, you were asked to indicate whatever other effective opposition may have been

bought off by the Company and you refused to do that; isn't that correct?

A I was unprepared for any of that line of questioning. I thought we were going to defend my right to writing this thing and there was no preparation when I went into arbitration. My lawyer never met with me.

MR. COONEY: Well, Your Honor, this isn't responsive to the question, I don't think, whether his lawyer met with him. His lawyer did meet with him.

THE COURT: Well, he said twice now he was not prepared to give those details at that time.

THE WITNESS: I am prepared, however, if you want them now. If I went there with preparation, I would have named them.

BY MR. COONEY:

Q And you were unprepared when you went to this arbitration proceeding?

A I was totally unprepared for the entire -- that line of questioning. I didn't know. I only thought we were going there on the First Amendment. This was my belief at the time.

Q You were a shop steward for how many years? Three of four years?

A Four years.

Q And by the time you got to the arbitration stage, you were aware of the reason why you had been discharged?

A I was aware of the reason. I was discharged for writing an article that was published.

Q At the time you wrote the article, Exhibit 4, did you know of your own knowledge that the defendant Avco Corporation was buying off whatever other effective opposition existed?

A Yes.

Q You knew that, to your own knowledge?

A Yes. I did.

Q And you refused to tell the arbitrator about it?

A Well --

Q Is that correct?

A I was unprepared to give it.

Q Well, when you wrote the article, did you know it?

A Yes.

Q And if you knew it when you wrote the article, you must have know it when you were at the arbitration proceeding; isn't that correct?

MR. SOSNOFF: I object to what he must have known.

THE WITNESS: I knew it.

* * *

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THE WITNESS: Yes.

BY MR. COONEY:

Q Were you asked questions at the arbitration proceeding, really beginning from Page 84 through 87, relating to the allegations you made in the paragraph in your article, Exhibit 4 that begins in the middle, "Anyway, Avco like all large corporations has become sophisticated relating (1) to special privileges, (2) to making it miserable for and sometimes firing the really dedicated unionist, and last but not least, buying off whatever other effective opposition may be left with a foremanship."

Were you asked to name names about those allegations that you made in your article at the arbitration proceeding?

A Yes.

Q And did you name any names?

A No.

Q And at the time you wrote this article, you claim you knew the names; is that correct?

A I don't think I wrote anything about names.

Q No. Excuse me. At the time you wrote the article, Exhibit 4, as I understand it, you claim you knew the names of those individuals at that time; is that right?

A I knew of the practice as such rather than names.

Q When you wrote the article, Exhibit 4, you didn't know of any particular individuals who came within any of those

categories; is that correct?

A Oh, I didn't know of any specific individual at the time I was asked in the arbitration.

Q And I take it at the time you were asked in arbitration, whatever you knew prior to going to the arbitration hearing, for example, when you wrote the article, you knew when you were at the arbitration hearing?

A I knew the names; is that your question?

Q Whatever information you based your article on, Exhibit 4, that you knew about when you wrote the article, you knew this same information when you were at the arbitration hearing; isn't that correct?

A Yes.

MR. SOSNOFF: Your Honor, can I ask counsel to point out the pages in the transcript, 84 to 88, the specific question he has in mind where Mr. Holodnak refused to name the names of persons who were promoted to foremanships? I can't find such a question.

MR. COONEY: Your Honor, he has the transcript. If he wants to ask him on his examination, I think he can do it. There are several questions relating to this paragraph of the article about the naming of names dealing with foremanships, with making it miserable,

* * *

Your Honor.

BY MR. COONEY:

Q Mr. Holodnak, at the arbitration proceeding, did you name any names at all relating to any of the allegations written in your article, Exhibit 4?

A After the recess I was advised by my --

MR. COONEY: Your Honor, I think that calls for a simple answer.

THE WITNESS: Yes.

MR. SOSNOFF: The answer is "yes".

BY MR. COONEY:

Q You did name names?

A Yes.

Q And what names did you name?

MR. SOSNOFF: Well --

THE WITNESS: I can't recall them. They're in the transcript, near the end of the transcript somewhere.

BY MR. COONEY:

Q Do you recall with what particular allegation you named names?

A I think it was in reference to who I showed the original article to.

Q Who you showed the original article to?

A Yes.

Q As far as any allegations that you made in your article, Exhibit 4, did you name any names at the arbitration proceeding?

A No. I did not.

Q You were given an opportunity at the arbitration proceeding to name names; isn't that correct?

A I was given the opportunity, but I didn't -- couldn't come up with any names at the moment.

Q I will show you Page 82 of the transcript and do you have a copy there?

A Yes.

Q All right. And it starts out at the top of the page, "Now, is that another reason for the basis of your belief here that the Company is devious and unfair?"

And then it continues on with an answer, and then a question. Now, with reference to the last paragraph on Page 14, that would be your article, Exhibit 4, "Anyway, Avco like all large corporations has become sophisticated in its underhanded union busting tactics which run the gamit from sweet talk, giving special privileges to Company orientated candidates such as allowing them to campaign on Company time, using rats (stool pigeons) to making it miserable for and sometimes firing the really dedicated unionist, and last but not least, buying off whatever other effective opposition may be left with a foremanship. Now, can you give us one example of the basis

for your belief that the Company bought off opposition with a foremanship?"

And your answer was "You mean you want names?" Is that right?

A Yes.

Q And you were unable to name any names; isn't that right?

A At the moment I was not. I named one, John Arnold.

Q You said that as a joke; isn't that correct?

A Well, my attorney advised me -- whispered to me that it should be a joke.

Q And you said you meant it was facetious?

A Facetious.

MR. SOSNOFF: I think counsel has again characterized the record when he says you couldn't name any names. If you look on the next page, the top of Page 83 when the witness was asked the question, "Name one.", his answer was "I don't want to name any names." Not that he couldn't, but "I don't want to.", and that's what the record shows.

MR. COONEY: Your Honor, I think the records before the Court also shows that the witness has testified here that he wasn't, one, prepared

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to name names; that, two, he didn't know the names when he was at the arbitration proceeding, and I take exception to what counsel says about mischaracterizing the record.

BY MR. COONEY:

Q So it is correct, Mr. Holodnak, that you were asked that question about naming names at the arbitration proceeding?

A Yes.

Q And specifically relating to the buying off of whatever other effective opposition was around; isn't that right?

A Yes.

Q In your article, Plaintiff's Exhibit 4, did you write, "In any event, the Company gets away with its devious and unfair labor practices because the Company is above the law, even the more naive realize this and the biased judges and arbitrators for all practical purposes belong to the Company. The most recent example was the firing of 22 so called "hard core"..." I can't make that word out.

"From his heavenly perch the impartial arbitrator backing up the Company pronounced his God-like opinion upon us poor sinful mortals while praising the pure as the snow "patient Company" to the high heavens."

You wrote that in your article; isn't that correct?

A Yes.

Q And these were the 22 individuals who went through the usual grievance procedure and arbitration procedure and were subsequently discharged for just cause for wildcat strikes; isn't that correct?

A Yes.

Q And I take it you felt that the arbitrator, the permanent arbitrator that was appointed under the contract was biased in that matter; is that correct?

A Yes.

Q And you realize that the labor contract called for arbitration; isn't that correct?

A Yes.

Q And you realize the labor contract had a no strike clause?

A Yes.

Q And a no strike clause prohibits wildcat strikes; isn't that correct?

A Yes.

Q Did you also write in your article, Exhibit 4, beginning with the language that "The point is that nothing has ever been accomplished by so called "reasonable people". Actually, it's unreasonable to tell us that we must be reasonable to all the official insanity that exists around us. The labor movement itself would never have been born if

the workers had been reasonable." Is that right?

A Yes.

Q Were you referring to wildcat strikes when you wrote that?

A No.

Q Were you referring to the fact that the union leadership had strongly advised the membership not to conduct wildcat strikes?

A No.

Q You thought it was all right, I take it, for the 22 individuals who were discharged to conduct the wildcat strike; is that correct?

A No. I thought that the people who started the wildcat strike were never brought to trial and the strikes were deliberately started by Company officials.

Q But you thought it was all right even though the contract had a no strike clause it in to conduct the wildcat strike?

A I think wildcat strikes are wrong. However, the Company officials provoked them and they --

Q So that made them all right then; is that right?

A The Company officials are never brought to task in any arbitration hearing or grievance procedures, only the people who are provoked into the strikes are brought to trials, which I feel is unfair.

Q And you feel as long as the Company provoked the individuals, then they had the right to conduct the wildcat strike?

A I feel that the Company has no right to keep provoking people.

Q You have a binding arbitration that is called for under the agreement; isn't that correct, Mr. Holodnak?

A Yes.

Q And isn't that the way the union and the Company have decided to handle these problems?

A Yes.

Q But you feel that the union should have in its arsenal of weapons the wildcat strike?

A The qualifying statement only is if everything breaks down and in cases where Avco -- where the grievance procedure had broken down. On several occasions, there were no other alternatives for people to get redress, and yet, in every instance, the only people that were punished were the people who had to take these excessive actions which everyone will admit are not beneficial to anybody. The only main thing is nobody ever brings the people who start the wildcat strikes to task, and every -- in my experience, every wildcat strike that has been conducted in that plant was started deliberately by Company officials to undermine the union, I believe. Whatever their motive was, I can't say.

Q When you wrote your article, Mr. Holodnak, Exhibit 4, you had done some research or looked into the facts; is that correct?

A Yes.

Q And you got information that indicated to you that wildcat strikes were legal; is that correct?

A I don't know if I can qualify myself as an expert on the law, whether legal or not. I am saying --

Q Well, at the time you wrote the article, you thought that wildcat strikes were legal based upon the work you had done?

A Well, I assumed they were constitutionally legal and in view of the illegal acts that provoke wildcat strikes, I don't say that two wrongs make a right, but when there is no other alternative, at least the people should have that right, if as the last resort there is no other alternative. I don't -- I never advocate wildcat strikes. They're very divisive and costly to everybody.

Q You wrote in your article, Mr. Holodnak, that you thought it was -- to paraphrase it, a good weapon to have in the union's arsenal; is that correct?

A That is right.

Q And there are circumstances when, you wrote in the article, that you felt would warrant a wildcat strike; isn't that correct?

A Yes.

Q And you told the arbitrator this; isn't that correct?

A Yes.

Q Now, Mr. Holodnak, this morning you testified about how much income you claimed to have lost if you had been working during the whole period of time since the time you were terminated; is that correct?

A Yes.

Q Do I understand -- I may have misheard you. Are you a qualified tool and die maker or something like that?

A Yes. I am.

Q And do you have any kind of an educational background for that or did you just train yourself?

A Well, I had two years of state trade school and an apprenticeship program through my working in the plant.

Q And from 1969 when you were discharged, is that correct --

A Yes.

Q -- to the present time, you are telling this Court and myself that you have never worked as a tool and die maker?

A Correct.

Q And you haven't been able to find any employment in our area as a tool and die maker?

* * *

Q And during the time that you worked at Avco, it was not unusual for you to only work four days a week or to take time off because of illness; isn't that correct?

A What do you mean by "unusual"?

Q Well, you had a history or course of illness; isn't that correct?

A Yes. I did.

Q And as a result of that, you took time off?

A Yes.

Q And when you took part in the arbitration proceeding and testified, and I call your attention to Page 76, Mr. Holodnak, do you have that page?

A Yes.

Q As a shop steward, I think you indicated you were familiar with the grievance procedure; is that right?

A Yes.

Q And you were asked the question, were you not, "And you are familiar that the final step in the grievance procedure is arbitration before an arbitrator; is that right?"

A Yes.

Q And you answered "Yes". And were you also asked, "And did you know that according to the contract, the arbitrator's decision is final and binding on the parties?"

And what was your answer to that?

A Yes.

Q And did you also say in answer to a question which I will ask you here, it says "And did you realize the importance of the parties conforming with the arbitrator's decision?"

A Yes.

Q Now, I call your attention, you were asked a question on Page 103, Mr. Holodnak, down towards the bottom.

A Yes.

Q "Knowing what you now know about the facts situation which you have discussed this morning, would you have written this same article?" and you answered, did you not, "Well, no. I wouldn't have. No. Well, now that I know some of the things that are not accurate, of course, I would never have written it, but as I say..." and then the sentence ends; is that correct?

A I was interrupted. Yes.

Q But it just ends there; right?

A Yes.

Q And was that answer correct when you gave it at the arbitration proceeding?

A Yes. It was.

Q Now, just at the beginning of the arbitration proceeding on Page 3 of the transcript that you have there, were you asked a question by Mr. Burstein, "Mr. Arbitrator, before proceeding, I would like to ask Mr. Holodnak for the

record since I know he has consulted independent counsel whether or not he is satisfied to have the union counsel represent him?" and you answered "Yes. I am."

Was that correct when you gave that answer?

A Yes.

Q Were you also asked by Mr. Burstein, "And you have had an opportunity to discuss the case with me?" and how did you answer that?

A I said yes. I didn't say for how long.

Q When you were at the arbitration proceeding, you did not tell the arbitrator at any time that you were dissatisfied with Mr. Burstein's representation of you; isn't that correct?

A That is correct.

Q It is also correct, is it not, that you wrote a letter, I believe, to the President of the union asking to have Mr. Burstein represent you; isn't that correct?

A Yes.

MR. COONEY: May I just have a minute, Your Honor? I am looking for a reference in this record.

BY MR. COONEY:

Q Mr. Holodnak, I call your attention to Page 152 of the record, a copy of which you have in front of you. The record of the arbitration proceeding. Mr. Burstein asked you

a question in about the middle of the page. "I would just like to ask Mr. Holodnak this question."

The Arbitrator said "Well, then I will open the hearing for that purpose."

"MR. BURSTEIN: Mr. Holodnak, do you feel that you have been properly represented at this hearing?"

And your answer was "Yes. I do." Isn't that correct?

A Yes.

Q Mr. Burstein asked you at the bottom of that Page 152, "There hasn't been any pressure on you to make that statement, has there?"

And your answer, Mr. Holodnak, was "No." Isn't that correct?

A Yes.

Q And you were asked in addition by Mr. Burstein, "You feel you have had every opportunity to present everything you wanted to? The Arbitrator gave you every opportunity to make any statement, even out of the time process? In other words, ad lib. You had all the opportunity necessary?" and you said "Yes"; isn't that correct?

A Yes.

Q Mr. Holodnak, is it fair to say at the very conclusion of the entire arbitration proceeding, you did not tell the permanent arbitrator that you felt you had not been properly represented at that hearing; isn't that correct?

A Yes.

THE COURT: Would this be a good time for a brief recess?

MR. COONEY: Yes, Your Honor. It is rather warm in here.

THE COURT: We will take a brief recess.

MR. COONEY: Thank you.

(Whereupon, Court recessed at 3:05 P.M. and reconvened at 3:20 P.M.)

BY MR. COONEY:

Q Mr. Holodnak, while you were at the Avco plant, it is correct, is it not, to your knowledge, you had never received security clearance; isn't that right?

A No. You mean super security. No. I did not.

Q You claim you had received some type of security clearance?

A I think the regular security clearance I did receive, yes.

Q Were you restricted normally from going into classified areas in the plant?

A I was along with many others, yes.

Q I am not saying that there weren't others as well as yourself, but you were not allowed and did not have security clearance for certain areas in the plant; isn't that correct?

A That is correct.

Q Now, the fact that you never had gotten security clearance did not affect your employment at the Company at any time; isn't that correct?

A That is correct.

Q Now, during the course of the arbitration proceeding, and again referring to wildcat strikes, do you recall if these two documents went into evidence at the arbitration proceeding that you were at?

A They were verbally brought in, but not physically. I did not see these documents.

Q All right. Let me ask you this: At any time before the hearing -- I will withdraw that question.

Prior to the arbitration hearing, you had seen these documents; isn't that correct? You were familiar with the terms of them?

A I was familiar with them although I don't believe I had a copy of them.

Q You were familiar with them. The union had made known to its members these decisions of the arbitrators?

A I was aware of that decision.

Q And they generally related to wildcat strikes; isn't that correct?

A Yes.

* * *

MR. COONEY: I would like to offer these,

Honor rather have me go or the redirect on Mr. Cooney's cross?

THE COURT: I think it's your turn next.

CROSS EXAMINATION

BY MR. SHEPRO:

Q Mr. Holodnak, I think you testified you were a steward in the union for approximately four years; is that correct?

A Yes.

Q And what are the duties of a steward?

A Well, the duties of a steward are to process problems and grievances related to the departments which he covers.

Q And at the time of your firing, you were no longer a steward; is that correct?

A Correct.

Q But you indeed went to your steward?

A Yes.

Q And he had received about the same time you did the notice of your termination?

A Correct.

Q And did he show any hostility towards you --

A No.

Q -- in your initial discussion?

A Oh, no.

Q And when Mr. Mesick prior to this Step 2, conference or whatever it was, did he show any hostility towards you?

A No.

Q And the two of them went with you into this labor relations meeting; is that correct?

A Yes.

Q And when you came out, as you say, and they read the article that you had written which the Company said was the cause, I think, for violation of Plant Conduct Rule 19, did they show any hostility towards you at that time?

A No.

Q After the arbitration or rather after this Step 2 labor relations meeting, you came out of that meeting, the three of you; is that correct?

A I think I was escorted out alone at that point.

Q All right. At the end of that meeting, did you sign a grievance?

A Yes.

Q And was there any question with the two union members, the steward and Mr. Mesick was a committeeman, is that correct --

A Yes.

Q -- that they immediately proceed with the next step?

A Yes.

Q There was no discussion about not doing that?

A No.

Q They immediately thought that was the proper thing to do?

A Yes.

Q Could they have decided otherwise?

A I suppose they could have.

Q And they could have not taken any further steps?

A Yes.

Q Now, would you describe what happens in the next step?

A The next step was the third step of the grievance procedure. The Shop Committee meets with the Company Labor Relations and they discuss the third step grievance.

Q And normally, an employee who was terminated wouldn't be present at that meeting?

A Right.

Q And in fact, you weren't satisfied and you weren't present at that meeting?

A Right.

Q And you weren't supposed to be at that meeting; is that correct?

A Right.

Q How many committeemen were there at that time?

A I think there were eight or seven.

Q Could there have been ten?

A There could have been ten. I don't know the exact number now.

Q And would all ten be present at that third step?

A I guess they would be.

Q All right. And they told you after that step that you still had been terminated, the Company had not changed its mind; is that correct?

A Yes.

Q And did they also tell you that they would process the grievance to arbitration?

A Yes.

Q And did they have a choice not to process that to arbitration?

A Yes.

Q And how does it come about that it did come into arbitration as far as the committeemen are concerned?

A The union committeemen voted to put it into arbitration.

Q They took a vote?

A They took a vote.

Q Are you aware of what that vote was?

A No. I am not aware of the number, who voted for and who didn't vote for it.

Q Does it have to be a simple majority to put it into arbitration?

A Yes.

Q At least that?

A Yes.

Q Are you aware of any controversy or contention that your case should not have been put into arbitration?

A To my knowledge, I wasn't aware. No.

Q Now, how did it arrive that attorney Burstein came to represent you?

A Attorney Burstein was the union counsel at the time.

Q How long had he been representing the union? Do you know?

A I don't know the approximate number of years. I guess a couple of years, at least. I am not sure.

Q All right.

A But he was the union counsel at the time I was terminated.

Q And did the union come to you and ask you if you wanted an attorney.

A No. I inquired as to who would represent me, and I was told by my committeeman that it would be either the Shop Committee Chairman or the Union Attorney, and since I had a choice between the Union Committeeman who was not an attorney

and a real attorney, I naturally chose the attorney because I felt that this was a civil liberties kind of a problem. So I requested that I have the attorney who was Burstein.

Q But what was the usual circumstance in arbitration? Was there an attorney that represented the union employees as a customary thing?

A Sometimes the attorney and sometimes the Shop Committee Chairman would represent them.

Q Was there a normal case? More often there would be no attorney than not?

A Gee, I don't -- I wasn't present at arbitration hearings. As a steward, I was within the first, second and third steps of the grievance procedure. Outside of that, it was the Committeeman.

Q But were you lead to believe that you had a choice between an attorney or your Committeeman to represent you at the arbitration hearing?

A Yes. I was lead to believe I had a choice.

Q And the union might have said "No. We are not going to hire an attorney."; is that correct?

A Well, they had an attorney.

Q Well, they didn't have to have him come to your arbitration, did they?

A No.

Q But they did pay for that attorney; is that correct?

A He was on their payroll. He was their attorney.

Q Are you aware that they may have paid him -- made separate arrangements to pay him separately?

A I wasn't aware. No.

Q The union didn't ask you for any money, did it?

A No.

Q Did Mr. Burstein ever send you any bill?

A No.

Q Did you pay any costs of that arbitration?

A No.

Q Do you know Mr. David Kelly?

A Yes. I do.

Q And who is he?

A I believe currently he is the recording secretary.

Q And in 1969, do you recall who he was?

A I believe he was the committeeman at that time.

Q And do you recall who Mr. Frank Gontarz was in 1969?

A Yes. He was the recording secretary.

Q At that time?

A Yes.

Q Did you meet with Mr. Gontarz at any time prior to the arbitration to discuss your case?

A No. I did not.

Q Do you remember having a meeting with him at the

union offices approximately one week before the arbitration?

A No. I did not.

Q Do you recall meeting Mr. Burstein and Mr. Gontarz at the union office approximately one week before the arbitration?

A No. I did not.

Q Are you aware that in 1969, the day of your arbitration, there were other matters in arbitration before Burton Turkus, the Arbitrator?

A I wasn't aware of any other problems.

Q Other people?

A Right.

Q Were there others during the day while you were there?

A When I was where?

Q Before Burton Turkus, the Arbitrator?

A Were there any other grievances or arbitration hearings?

Q Yes.

A I don't believe there was any because we were the first one on the agenda.

Q When you got to the Howard Johnson Motel, as you say, about 9:00, who first appeared from the union?

A Joe Mesick.

Q And who else appeared after him?

A Well, I believe it was Bill Strout and Gontarz. I don't know if they came together or separately.

Q Is Mr. Strout from the union?

A Mr. Strout, yes. He was Chairman of the Shop Committee. I believe those are the two people that appeared.

Q And when among those people did Mr. Burstein appear?

A Well, he appeared after we came into the hotel room. Several minutes later after we arrived in the room.

Q After these other gentlemen had arrived?

A Yes.

Q And they were present with you in this room?

A Yes.

Q When Mr. Burstein came in?

A Yes. They were present.

Q Were they present the whole time up until the time you went to see Mr. Turkus?

A Yes.

Q And were they present as you allege these conversations were held between you and Mr. Burstein?

A Yes.

Q And they should be aware of them then?

A I believe they should be.

Q Did any of the members of the union present during that day show any hostility towards you?

A No.

Q Did they say that they wanted to withdraw the arbitration?

A Oh, no.

Q Was there any suggestion on their part that you had wounded them by your article?

A No. Are you talking about the union officials or --

Q The union officials.

A Right. That is right.

Q Now, Mr. Booth and Mr. Souce were also present that day, were they not?

A You're right. You're right. They also appeared. Yes.

Q Were they present in the room when you discussed your case with Mr. Burstein?

A I am not sure if they came after Burstein arrived or just prior to Burstein's arrival, but I do remember that they were also present there.

Q And who were Mr. Booth and Mr. Souce?

A Well, Mr. Booth was the President of Local 1010 and Souce was Vice President.

Q Are you aware of the time that the President and the Vice President come down to arbitration?

A Yes.

Q Was this a normal thing for them to do?

A Well, normally, the President does arrive. I don't know -- the Vice President, I don't know.

Q Did they show any hostility towards you?

A No.

Q Did you have any conversations with them at all, Mr. Booth and Mr. Souce?

A Well, I don't recall if we had any real conversation that I recall off hand. Maybe, you know, like we greeted each other, but I don't believe we had any substantial or conversation of any substance.

Q Did Mr. Mesick or Mr. Gontarz or Mr. Strout indicate to you in any way that they would not carry forward with your grievance as best they were able to do at any time?

A They never did. No.

Q Did any one from the union at any time indicate so?

A No.

Q Now, on the day of the arbitration, is it fair to say that you were very concerned about your job and you may have been a little excited?

A I guess that would be a fair assessment. Yes.

Q So that perhaps the ten or fifteen minutes that you say Mr. Burstein spent with you would be longer, perhaps double that?

A It's quite possible. Yes. I didn't say I knew the exact time, but I felt that it was very brief and we did not discuss my case as such. Whatever the suggestions were being made were related to peripheral things, not even related to my particular problem.

Q You were accused of violating Plant Conduct Rule 19; is that correct?

A Yes.

Q And when was the first time that it was mentioned that you had violated Plant Conduct Rule 19?

A On May 28th. On the morning of my termination.

Q And no other rule was indicated as being violated by you?

A Correct.

Q And during the arbitration, was that the only rule that you were treated as violating, Plant Conduct Rule 19?

A Correct. 19 was the only one. Yes.

Q And Mr. Burstein, I think you said, read the article --

A He read the article.

Q -- that you had written?

A Yes. At the meeting prior to the arbitration.

Q While you were present?

A While I was present.

Q Did Mr. Burstein indicate to you that he had the

article or had seen the article prior to that time?

A No. He did not.

Q Did Mr. Booth or Mr. Souce indicate to you that they had indicated to Mr. Burstein what you were accused of?

A I couldn't say.

Q You had no indication from anyone that they had discussed this with the attorney?

A I did not. No. I had no indication.

Q After the arbitration and after you initiated this suit, did you have any conversations with any union official?

A Yes. I believe I did.

Q With whom did you have conversations?

A I believe I talked with Joe Mesick on a couple of occasions and Russ Booth.

Q Did you also speak to Mr. Gontarz?

A I think I might have talked to him once on the telephone. I was trying to get in touch with Russ Booth, and I think Gontarz was at the Union Hall at the time, and he answered, but he told me that Russ Booth wasn't in at the moment.

Q And perhaps Mr. Kelly?

A I think I did talk to Mr. Kelly also. Yes.

Q Did you speak to Mr. Mesick about the arbitration?

A After the arbitration.

Q After the arbitration. In fact, after the suit was initiated?

A Yes. I think I did on one or two occasions on the telephone.

Q Did you not indicate at that time that you had no grievance or gripe or anything against the union?

A Yes. I did.

Q And did you also not indicate that you thought that the hearing was a fair one, this arbitration hearing?

A I don't think I indicated that the arbitration was a fair one. I said that I had no grievance against the union. They processed my grievance fairly as far as it was under their control. When it went in the hands of the attorney, however, I found out after the arbitration hearing that I was not properly represented, because the subsequent information I received indicated to me that the points of law that were brought out by Mr. Burstein were inappropriate to the case.

Q You didn't know that of your own knowledge then?

A Not of my own knowledge.

Q You were satisfied with union counsel?

A I was satisfied to the extent that I thought he represented me properly because I wasn't aware of the quality of the representation at the time.

Q All right. Now, you did tell the truth during that arbitration and your answers in that arbitration were the truth, were they not?

A Yes.

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Q And you were in the practice and habit of speaking out what was on your mind and relating to others what feelings you had through your article and other publications; is that correct?

A Yes.

Q So why, if you say that you weren't happy with the counsel's representation of you in so far only as you allege he had a half an hour at best time to gather the facts, at the end of this arbitration on Page 152 you indicated that you were still happy with him?

A I was happy with him --

MR. SOSNOFF: Excuse me. I would like to object. I am not sure the testimony shows there was a half hour conference, and it is a very involved question. I sort of lost the question by the time he reached the end. I wish he would rephrase it.

THE COURT: Yes. Do you understand the question?

THE WITNESS: Well, I am not sure I do. No.

THE COURT: Could you simplify it, please?

MR. SHEPRO: I will try, Your Honor. It was a lengthy question.

Q You are in the habit, are you not, -- you are a

well-read person, would you not characterize yourself as that?

A I guess I am.

Q And you are in the habit of writing articles about things that concern you?

A Yes.

Q And you speak out about things?

A Yes.

Q And you have told the truth and the whole truth in that arbitration?

A Yes.

Q Then why on Page 152 did you indicate that you were satisfied with union counsel if, in fact, as you say, he spent perhaps ten, twenty or thirty minutes with you in preparation?

A At the time I wasn't aware that an attorney should prepare the case prior to his hearing, and during the hearing I wasn't aware of the points of law that have to be brought out. I was -- I am not a lawyer, and there was no way for me to judge whether I was properly represented or not at that time. So I only answered at the time what I felt. I couldn't answer in any other way except that I thought it was a fair representation. I have subsequently found out that --

MR. COONEY: Well, I am going to object to that, Your Honor, to what he subsequently found out. There is no question pending at this

point.

MR. SOSNOFF: I think he is still completing his answer to what was a wide question.

MR. SHEPRO: He has testified before.

THE COURT: I think the witness has answered.

BY MR. SHEPRO:

Q Did you not indicate to Mr. Kelly as well that you were satisfied with the union and union counsel after you initiated the suit?

A I don't think I talked to Mr. Kelly about the union counsel. I did indicate that David Kelly was a shop committeeman at the time. He was one of the people that told me he voted for my case going into arbitration. I was satisified with the union, and I have no grievance with the union because the union did process all my grievances properly. The only problem that arose was when it got into the hands of the attorney who did not properly -- did not prepare me for the case at all, and then I found out that during the course of the entire arbitration hearing he did not conduct it according to the points which I think were relevant with the First Amendment problem.

Q Let me cut you off a little bit here. I am referring to this conversation or several conversations you had with Mr. Kelly, and I am aware of what you are saying that you found out later on, but I am saying later on also, that after

the initiation of this suit, did you not have an extensive conversation with Mr. Kelly and indicate the only reason for suing this union was because the attorney told you you had to do that in order to sue the Company? Didn't they tell you that and isn't that why the union is a defendant in this case, not because you feel even today that Mr. Burstein misrepresented you or didn't represent you as vigoriously as he should have?

A Well, this was my reason why I consented. Originally, I had misconceptions about bringing the union into it as a defendant, but after it was pointed out to me that Burstein had defaulted on my defense, I had no other alternative but to go along with that, and I felt that there was a transgression on the part of the attorney.

MR. SHEPRO: I have nothing further, Your Honor.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. SOSNOFF:

Q Now, Mr. Holodnak, you have testified here that in response to an earlier question of mine when I examined you that you believed you had a clean record as far as disciplinary actions with the Company went at the time of your dismissal; is that right?

A Yes.

Q Then after the Company's attorney brought out

several warnings and one or two suspensions that you have received earlier in time. Do you recall that?

A Yes.

Q And that is now in evidence as defendant's A. Now, is it still your contention that you had a clean record at the time you were terminated?

A Yes.

Q Can you tell us what the -- withdraw that.

Is that contention based on any provision in the Collective Bargaining Agreement?

A Yes. It is.

Q I am going to show you the Collective Bargaining Agreement and ask you to tell me what article and section of the Agreement leads you to make that contention that you had a clean record at the time you were terminated. Just tell us the article number. Okay?

A The article number is Article No. V, and it's Section D, Section 2, paragraph D.

Q All right. In other words, you based your contention on the provisions that appear in the Collective Bargaining Agreement, Plaintiff's Exhibit 2, in Section 2, is that right, Sub-section D; is that right?

A Yes.

Q I think it would be helpful here if you read for the Court Section 2, Sub-sections A and D because A is

* * *

five years prior to the date of a discharge shall not be considered part of the record of an employee in a discharge case."

Q Now, when you testified that you believed you had a clean record, was the basis of that testimony Sub-section D of Section 2 which calls for the removal of disciplinary records after one year?

A Yes.

Q And in fact, Mr. Holodnak, with the exception of one warning, namely, the one of December 6, 1968, it is a fact, is it not, that all the warnings or other actions referred to in Defendant's Exhibit A took place more than five years prior to the date of your dismissal; is that right?

A Yes.

Q And now, this was one warning that is dated December 6, 1968. What was the disposition of that warning, if you know?

A That one was rescinded.

Q So this was no longer in effect; is that right?

A Correct.

Q There was never any that went into your record as a warning; is that right?

A That is correct.

Q Was it rescinded in the course of the grievance processing machinery?

A Yes. It was.

Q At what stage of the grievance processing was it rescinded?

A I think it was the second step.

Q In fact, attached to Company Exhibit 1, the first page of Company Exhibit 1 confirms that this warning has been rescinded, is that right, the warning of December 6, 1968?

A Yes.

Q Now, Company counsel questioned you at length about a portion of your article where you referred to the effectiveness of union officials being reduced by their promotion to management. Do you recall that?

A Yes.

Q And I think it was brought out that, in fact, you were asked during the course of the arbitration to name names of such persons and you declined to do so. Do you remember that?

A Yes.

Q Now, could you now name the names of union officials who have been promoted to management positions?

A Yes.

MR. COONEY: Objection, Your Honor. That is not the question I asked him. As I understand the article that was written, it dealt with buying off the opposition, something to that effect.

We are not talking about promoting people in the Corporation.

THE WITNESS: My article states --

MR. COONEY: Wait a second, please, Mr. Witness.

THE COURT: Did you mean to amend the question accordingly?

BY MR. SOSNOFF:

Q Well, let me ask you: Do you feel that the promotions of these union officials reduce the effectiveness of the union in representing employees?

A Yes. In fact, my article states "Buying off with promotions". It spells it out.

Q Now, the list of names that you are going to give me in response to my question are going to be names that are persons you feel were, in fact, bought off by promotions?

A Yes. They were. Yes.

Q Can you name as many persons as you can think of at the moment who were promoted from positions as union officials to positions in management as supervisors?

MR. COONEY: I am going to object to that question. That is not the question that is at issue in this case. That is not what he wrote. That, again, is talking about simple promotions.

THE WITNESS: It's not -- it's spelled out.

BY MR. SOSNOFF:

Q Can you give me a list of officials who you feel were bought off by promotions?

A Yes. I can.

Q Will you name such names?

A Yes. Do you want me to name them?

Q Yes.

A John Arnold, Mato Gavin.

Q Was Arnold once a union official?

A He was a union official. William Fantasia, Fred East, Fred Alban, Stan Yosdick, Herb Nash, Bill Panton. These are names that I was familiar with with my personal knowledge. There were probably many others.

Q And did those promotions all take place before your article was published?

A Oh, yes.

Q Now, the attorney for the Company when he was questioning you asked whether you were familiar with an arbitration proceeding in which 22 employees had been discharged?

A Yes.

Q And I think in one of his questions to you, he asked whether you were familiar with the 22 employees who were discharged for just cause. Do you remember that?

A Yes.

Q Do you remember the question?

* * *

relatively inexpensive. I don't think there is anything that is inexpensive today.

THE COURT: Well, that is my ruling.

MR. COONEY: I understand. Thank you, Your Honor.

BY MR. SOSNOFF:

Q Now, Mr. Holodnak, prior to the date of your arbitration which was July 17th, did you discuss with independent counsel representation to which you had a right at the arbitration?

A Yes.

Q And who did you have that discussion with?

A George Johnson.

Q Now, did you in the course of discussing this with George Johnson ask him whether he could represent you at the hearing?

A Yes.

Q And what did he tell you?

MR. COONEY: I am going to object to what Mr. Johnson told him. I don't see how it is admissible in this case here, say to my people.

THE COURT: This was a talk with Mr. Johnson prior to the hearing?

MR. SOSNOFF: Prior to the hearing.

THE COURT: July 17th.

MR. SOSNOFF: You see, they opened the door to this, Your Honor. They questioned him about his response to a question by Mr. Burstein on Page 3 of the transcript of the arbitration which was whether he was satisified to be represented by union counsel. Now, if I may make an offer of proof, we are prepared to show, and I don't know if you want me to do it in the presence of the witness or not, but --

THE COURT: Well, I guess it would be no surprise.

MR. SOSNOFF: It wouldn't be any surprise, Your Honor. We are prepared to show through this witness' testimony and Mr. Johnson's testimony which will be in the transcript that Mr. Johnson advised him that on the basis of his knowledge of the law, Mr. Holodnak had no alternative but to permit the union to represent him in the arbitration proceeding in the first instance, and that while Mr. Johnson was volunteering his services to Mr. Burstein, if he wasn't called in, there was nothing he could do about it. He was so advised and that is the evidence I would like to elicit from Mr. Holodnak, and I think it is material in view

of the Company's actions and the defendants' actions in referring to this -- well, I should say in clarifying this provision of the transcript.

THE COURT: Well, I think it bears upon the plaintiff's state of mind which you have gone into on cross examination.

MR. COONEY: Well, I have stated the reasons why I am objecting to it, and I still claim it, Your Honor. I don't think it is admissible.

THE COURT: I will overrule the objection.

BY MR. SOSNOFF:

Q I think you testified you had discussion with Mr. Johnson about whether he could represent you; is that right?

A Yes.

Q What did Mr. Johnson tell you, if you recall?

A Well, Mr. Johnson had made several attempts to consult with attorney Burstein, and I think he was unsuccessful in every effort.

MR. COONEY: Well, Your Honor, that is not responsive to the question asked, and I move it be stricken.

MR. SOSNOFF: I think that is introductory

to the question.

MR. COONEY: Well, Your Honor --

BY MR. SOSNOFF:

Q Will you tell us what Mr. Johnson said to you about --

THE COURT: The Court will disregard that.

MR. SOSNOFF: Excuse me.

Q Will you tell us what Mr. Johnson said to you about his ability to represent you at the hearing?

A Well, he said he would not be able to get into the arbitration hearing to represent me, that I would have to exhaust the union grievance procedure which is provided for by the contract, and that the outcome of that proceeding, I guess, would be -- then he would come into the case, if it was ruled against me. I believe that was the substance of it.

Q All right. Now, at the end of the transcript, at the end of the arbitration hearing, you were asked whether you were satisfied with Mr. Burstein's representation.

A Yes.

Q Do you remember that?

A Yes.

Q And you answered "Yes"; is that right?

A Yes.

Q And I take it that answer was true when you gave it?

A Yes.

Q And did you subsequently change your mind as to whether you were satisfied with that representation?

A Yes.

Q And was that after consultation with Mr. Johnson?

A Yes.

Q And in fact, did you authorize Mr. Johnson to institute this lawsuit against both the union and the Company?

A Yes.

Q Now, was it the things that Mr. Johnson said to you and advice that he gave you that lead you to change your mind about whether you were satisfied with your representation at the arbitration proceeding?

A Yes.

Q Mr. Holodnak, how far did your education go?

A To the eighth grade, grammar school.

Q Now, I think I still never got an answer from you as to what your weekly rate plus overtime would have been in 1970 during the eleven week strike. Can you just figure that out quickly for me and let me know?

A Well, I have the figures.

THE COURT: It's on that sheet of Exhibit 14, isn't it?

MR. SOSNOFF: Maybe it would be, Your Honor.

* * *

Q All right. When you talked about in your direct testimony and in your affidavit that you submitted with your motion for a summary judgment, you not only said that you had a clean record, you had an unblemished record. You also indicated that no disciplinary action had ever been sustained against you; isn't that correct?

A That is correct.

Q And you knew that was not true when you made that statement; isn't that correct?

A That is not true.

Q You were suspended on at least two occasions; isn't that correct?

A I was going by the labor agreement which indicated that my record was clean. I have to go by the labor agreement.

Q You didn't put in your affidavit in support of your motion for a summary judgment that while you had had suspensions and while you had been given warnings for violating Company plant rules, that as far as you were concerned now these warnings and suspensions had been wiped clean? You said you had an unblemished record; isn't that true?

A That is true.

Q And even based upon your own theory of what the Company contract calls for, there was one warning within a year's period of your discharge; isn't that correct?

A And that was rescinded.

Q It is fair to say in your affidavit, in your testimony, you made it appear that you never had any problems at Avco; isn't that correct?

A I made it appear exactly what I did make it appear which was contractually correct.

Q Was contractually correct; is that right?

A Yes.

Q But it wasn't true, was it?

A It was true if I followed the contract.

Q But you knew it wasn't true, isn't that right?

A What do you mean, wasn't true? The contract spells it out in English.

Q You are a writer and you are familiar with the use of the English language; isn't that correct?

A I believe I do.

Q And when you wrote in your article, Exhibit 4, that the defendant Avco was buying off whatever other effective opposition may be left with a foremanship, you meant to indicate that they were doing something that was wrong and improper; isn't that right?

A I meant to indicate what it said, that they were not representing the union membership properly and they were rewarded for it.

Q Well, when you buy somebody off, Mr. Holodnak,

isn't there an implication that there's something wrong in doing that?

A Yes.

Q And that is what you meant to imply in that article; isn't that right?

A I meant to imply that, yes.

Q Now, you have a list that you testified from of the individuals you claim that were bought off that you read from today; isn't that right?

A Yes.

Q Can I see that, please?

A (Hands document)

Q When did you prepare this list?

A I think a day or two ago.

Q The first time you ever prepared a list of the people who were bought off by the defendant Avco was a day or two ago?

A Yes.

Q And the individuals that you listed as being bought off by the defendant Avco were known to you when you attended the arbitration proceeding; is that correct?

A Well, I wouldn't say that each individual was. I just knew of the practice as such and that was what I drew my conclusion from when I wrote my article. I didn't base it on specific persons at the time, but when I was forced to

do so, I went back and did it.

Q So you made this up after the fact, so to speak?

MR. SOSNOFF: I object to that.

THE WITNESS: Well, as individuals --

MR. SOSNOFF: Excuse me. That is not a fair characterization of his prior testimony that he made it up after the fact.

THE WITNESS: It was not made up.

MR. COONEY: I claim it, Your Honor.

THE WITNESS: What do you mean "made up"?

BY MR. COONEY:

Q Prepared it, made it up after the fact?

A I was forced to name names, so I had to come up with names.

Q Who forced you to name names?

A Well, I believe the arbitration hearing had brought that question out, and I didn't have the names handy at the time. I wasn't prepared to name names.

Q At the time you didn't have any names handy because, in fact, you didn't know of any at the time; isn't that right?

A It wasn't that I didn't know. I wanted to make sure that I had the names. If I was prepared, I would have had the names, but I didn't want to start just naming off.

Q Mr. Holodnak, when you wrote your articles for

the Aim News Letter, Exhibit 4, you knew what you believed to be a general practice in some other plants and perhaps at Avco of buying people off; is that right?

A Yes.

Q But you had no specific knowledge of anyone being bought off at Avco when you wrote your article, Exhibit 4; isn't that right?

A Yes. I had specific knowledge.

THE COURT: I think we have been over this quite a number of times.

MR. COONEY: I know it, Your Honor, and I suppose I am belaboring the point, but just may I ask one or two more questions on this?

BY MR. COONEY:

Q For example, you mentioned John Arnold. When you wrote the Aim article, did you have specific knowledge that he had been bought off by the Company?

A Well, I knew that John Arnold was a committeeman in the earlier stages of the union, yes.

Q And the implication in your article as you testified here today is that the Company wrongly bought him off somehow; is that what you are saying?

A Well, I don't know what you mean by "wrongly". They bought him off. He went off. He was a union official who went and became a Company official.

Q Is there something wrong in doing that, Mr. Holodnak, in taking a promotion?

A Well, I don't know if you can -- it depends. It's a subjective matter.

Q You don't know of any specific facts which form the basis of your conclusion that John Arnold was bought off by the defendant Avco, do you?

A I know that his motive for being a union official was not to represent the members, but to use it as a stepping stone for his own promotional possibilities.

Q In your mind, you feel he was interested in being promoted while being at Avco; is that right?

A He was interested in using the union as a stepping stone as so many other people have been using it rather than using it to represent the membership.

THE COURT: Well, now, gentlemen, I think we will recess until tomorrow morning at this point.

MR. COONEY: Thank you, Your Honor.

THE COURT: Can counsel give the Court any idea as to how much longer the presentation of the testimony will take?

MR. SOSNOFF: On the plaintiff's side, Your Honor, I believe that if Mr. Holodnak is completed with early, without too much more

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MR. COONEY: May it please the Court, I just have a couple more questions of Mr. Holodnak.

RECROSS EXAMINATION

BY MR. COONEY: (Continued)

Q Mr. Holodnak, is it correct that prior to the arbitration proceeding before Mr. Turkus that you never personally met with George Johnson?

A Personally?

Q Yes.

A I did meet with George Johnson personally.

Q Before the arbitration proceeding? When?

A I don't have that specific record with me. I know I did meet him once, on one occasion, in New Haven.

Q You mean that you talked to him on the telephone before the arbitration proceeding?

A I talked to him on the telephone on numerous occasions.

Q Let's just deal with before the arbitration proceeding.

A Right.

Q Is it not correct that you talked to him on the telephone once before the arbitration proceeding?

A A number of times, not once.

Q You talked to him a number of times before the

arbitration proceeding?

A Yes.

Q When is the first time that you met George Johnson personally?

A I met him on one occasion prior to the arbitration hearing, but I don't recall the date because I don't have that with me. I would have to look it up.

Q Mr. Holodnak, did you ever meet George Johnson prior to the arbitration proceeding in relation to any matters involved in this case?

A Yes.

Q When was that?

A It was sometime in October is about as close as I could come.

Q Then it is not correct that the first time you met Mr. Johnson was a couple of weeks before this lawsuit was instituted, which would have been in February of 1970?

A Oh, no. I had been in contact with George Johnson sometime after my termination which was in May of 1928.

Q You mean --

A Of 1969.

Q You met with him personally or talked with him on the telephone?

A I talked with him on numerous occasions subsequent

to my termination.

Q When you say "numerous occasions", how many times would you estimate you talked to him, about?

A Well, sometimes it would be two or three times a week.

Q Okay. And for how many weeks?

A Not on a regular basis.

Q Well, give us your best estimate. How many times you talked to him.

A Well, I know right after the termination there was very many calls between George and I.

Q Well, how many would you say there were?

A Maybe five or six, and then intermittently there would be -- over different periods of time we would have one or two calls, an occasion to call on certain problems that would arise.

Q And what is the nature of the contingency fee you talked about in your testimony yesterday?

A Well, there was no fee. He took it on a contingency basis.

Q What is the nature of that arrangement?

A Well, that would be in the event that at the conclusion of the trial it was a positive one in which we won, he would get a third, I believe, is the normal. I think that would be the normal.

Q Have you ever discussed this with your attorney?

A Well, we never did discuss it in any terms, but I later learned that these are the normal terms that usually are arrived at. We never did specify terms at all, actually.

Q Did you at any time ever estimate the amount of your back wages to be about $41,000?

A Back in 1963 I did.

Q You mean '73?

A I mean '73. Sorry.

Q And what part of 1973?

A I believe it was February.

Q I show you this letter and ask you to read it, and then I will ask you a question about it.

MR. SOSNOFF: Excuse me. I would like to look at what the witness is looking at.

MR. COONEY: You are welcome to look at it.

BY MR. COONEY:

Q In November of 1973, did you estimate your lost wages to be in the area of $41,000?

A No. I didn't.

Q You didn't?

A No.

Q Did you ever talk to your attorney about that?

A I talked to him. We estimated my wage loss in February of '73. I believe that is correct.

Q It wasn't correct in November of '73?

A I didn't say it was not correct. I just said that the last time that I had estimated my wage loss was in February of '73.

Q Was it correct in November of '73, that amount?

A That was correct as far as reflecting what I had already calculated in February of '73 so that would be correct in that respect.

Q Did you ever --

MR. SOSNOFF: Your Honor, I am going to object at this point. What Mr. Holodnak has been shown is a letter from me to counsel for Avco offering to settle this case and setting forth a sum at which we would settle, and it is highly improper, I think, in a proposed settlement to bring this up and cross examine the witness about it. If anything is privileged between counsel, I think it ought to be settled in discussions, and I think this whole line of inquiry is very improper and certainly doesn't in anyway impeach the witness. What we might have offered to settle for has nothing to do with what his lost wages might be.

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A Whatever -- I think whatever I saw in that letter which was -- which looks similar to what we had agreed to.

Q Well, would you look at that letter and see if it refreshes your recollection on that point if there is any need of it being refreshed?

MR. SOSNOFF: I am going to object to these questions. They're wholely irrelevant. Whatever our contingency fee arrangement might be, that is between Mr. Holodnak and my firm. I think it would have no bearing on any application for a fee that we might make to the Court and would certainly have no bearing on any testimony Mr. Holodnak can give now that that is at all pertinent or probative to the issues of this case.

THE COURT: I take it this is relevant because at that time some estimate was made of the lost wages?

MR. COONEY: Yes, Your Honor. And it is also relevant, Your Honor, I believe because over my objection Mr. Sosnoff went into some questioning of the witness about his fee arrangement, specifically, a contingency fee arrangement and Your Honor indicated at that time that if a claim was being made that it was proper to go into this area.

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were against public policy or something of that nature.

THE COURT: Well, that could always be gone into later if we ever get to that point. Well, go ahead.

MR. COONEY: Is it Your Honor's intention just to pass upon the liability issue in the case and then have a subsequent hearing in damages or something like that? I thought we were going to do it all at once.

THE COURT: Well, it will depend upon -- well, we have got so far, go ahead with it.

BY MR. COONEY:

Q Mr. Holodnak, what was your understanding according to you at this time around November 2nd, 1973?

A Well, I believe those figures represent a settlement if the case was settled out of Court which would preclude all the necessary other problems entailed in the trial..

Q And what was the fee arrangement, the contingency fee arrangement that you apparently agreed to pay?

A Well, I think it was not really specific. It was a general thing that was -- that is in that letter, I believe.

Q All right. And what is that amount?

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MR. SHEPRO: Are you marking both the defendant's exhibits A, B, C, and D fashion?

THE CLERK: Yes. Counsel, I am not setting up separate exhibit sheets for the respective defendants.

MR. SHEPRO: I don't think it makes a difference to me. I just wanted to know what procedure you were following.

THE CLERK: All defendants exhibits are on one list.

BY MR. SHEPRO:

Q Now, Mr. Holodnak, how long prior to May 28, 1969 had you known George Johnson?

A I couldn't answer that exactly how long I knew him.

Q Can you give us an approximate date when you first met him or spoke to him?

A I know that I did. I was put in direct contact with George Johnson subsequent to my termination because he represented Aim as an attorney, and when I got in trouble writing when I got terminated for writing an article in Aim, they felt obligated to represent me, so they put me in touch with their attorney, and if I am not mistaken, I think that my contacts with George Johnson occurred after my terminatien with Avco although I am not saying that I might not have met

him earlier at some time or other. It is very possible, but to my knowledge --

Q And was he in private practice as an attorney after May 28, 1969 when you first met him?

A Was he in private practice?

Q Yes.

A I believe he was.

Q What was your first contact with him? Over the phone or did you meet with him?

A Over the phone.

Q And did you make an appointment to see him?

A Well, we didn't make an appointment immediately. We did speak, as I said, on many instances right after my termination and we met maybe sometime later.

Q Was it after the arbitration or before?

A Oh, before the arbitration.

Q And for how long did you speak with him when you actually did meet him?

A Well, I spoke to him briefly. I met him on Orange Street I remember, and we didn't have any lengthy discussions, but we were waiting more or less for a decision to be rendered because -- I think we were waiting to find out what was happening because we did allow -- you know, we said that we had to go through the normal grievance machinery procedure and after the termination or after the -- well, we

were waiting for awhile before we got the arbitration hearing set. That was in July which was several months after my termination, and I think we were waiting for the decision from the arbitrator so there was really not very much we could do in the way of preparing any kind of defense until we knew what we were dealing with specifically.

Q Did Mr. Johnson have an office on Orange Street?

A He had -- no.

Q Where was it that you met him?

A I met him in Aim's office at one meeting one Sunday morning.

Q You don't know whether Mr. Johnson had a law office or not then?

A Oh, I knew he had a law office, yes, because I used to call him at his law office.

Q And was there a secretary that answered his phone calls and it was a law office indeed?

A Yes.

Q Do you know how long he had been in practice?

A No. I don't know.

Q Do you know how old Mr. Johnson was?

A No. I have no -- I don't know how old he is.

Q Was he about my age do you think back in 1969?

A Approximately.

Q In your conversations over the phone with Mr.

Johnson, you discussed this termination?

A Oh, yes. This was the reason for my connection with him.

Q And you reviewed the case with him?

A Yes. To the extent that we were able to.

Q Now, as I understand it, you have testified it was Mr. Johnson that indicated you had to use the union counsel; is that correct?

A Well, I don't know if he was the one that specifically said that although he did -- we all arrived at the conclusion because all the efforts to get him into the arbitration hearing were futile so we arrived at the conclusion. Whether he was the one that made the statement or whether we all arrived at that conclusion --

Q Well, by "we all" you mean yourself and Mr. Johnson?

A Right.

Q Were others involved in discussing this case besides yourself and Johnson?

A Well, there was Joe Mesick and union officials.

Q Other than the union, were there others involved in these discussions?

A No. Just Grorge Johnson and I.

Q And what provision did you make, if any, for Mr. Johnson to represent you at this time prior to arbitration?

A No provision. He just took it on a contingency basis and we had no specific provision made at all.

Q If you lost the case, he was going to represent you, is that not right?

A Yes. Oh, yes. In that respect, yes. I thought you meant in remunerative --

Q So you planned to take an appeal even before you lost the case if, in fact, you lost?

A This was what we planned to do. Yes.

Q And it wasn't until after the appeal that you reviewed the record or your counsel reviewed the record and because of what they found there, you appealed. In other words, you planned it all along?

A That we were going to appeal?

Q That is right.

A We planned -- first of all, he planned to represent me in the arbitration hearing. He planned to talk to Durstein and plan a strategy so that we can properly defend me in arbitration. All these things were planned prior to the arbitration hearing.

Q Would you indicate to the Court whether you planned to take an appeal regardless as long as you lost this arbitration?

A Well, first of all, taking it by the first step which was that we wanted to get involved -- he wanted to get

involved.

Q Mr. Holodnak --

MR. SOSNOFF: Wait a minute. I think the witness should be permitted to finish his answer.

MR. SHEPRO: I don't think he is being responsive.

MR. SOSNOFF: He is not giving the answer you want, Mr. Shepro, but I think he should be permitted to finish.

THE COURT: Have you finished the answer?

THE WITNESS: Well, I am not sure if I did or not because I don't know -- I am not clear on what the question is.

THE COURT: Well, let's have the question again.

BY MR. SHEPRO:

Q Mr. Holodnak, very simply, haven't you testified just now and yesterday that you planned to take an appeal utilizing Mr. Johnson's services if an when you lost the arbitration?

A This was after we made every attempt to try to get into the arbitration hearing. Yes.

Q Before the arbitration?

A We did not plan to appeal it until -- we,

obviously, planned to appeal it if things didn't go right. Yes.

Q By "things", if it didn't go right, you meant that you lost?

A If we lost. But we originally -- our original strategy was to get into the arbitration hearing and plan the defense which was totally unplanned.

MR. SHEPRO: I have nothing further, Your Honor.

REDIRECT EXAMINATION

BY MR. SOSNOFF:

Q When you just testified our original strategy was to get into the arbitration proceeding, who are the "our" you are referring to?

A My attorney, George Johnson and I to be present at the arbitration hearing.

MR. SOSNOFF: I have no further questions.

MR. COONEY: I have nothing further. Thank you, Your Honor.

MR. SHEPRO: Nothing further, Your Honor.

THE COURT: Well, Mr. Holodnak, after you were terminated on May the 28th, 1969, what efforts did you make to get other employment?

THE WITNESS: I had signed applications -- I went to employment offices in Sikorsky, I

* * *

downgrade from my original job when I was a tool and die maker. It required more physical activity, but because of my disability, I had to take the downgrade and less pay, but at least I was able to function and do my job properly, and I would have been able to do that up to today had I not been terminated, which would have precluded my having to go and seek new employment under the various conditions I had pointed out.

MR. COONEY: May it please the Court, in view of one question you asked, may I ask the witness a question?

RECROSS EXAMINATION

BY MR. COONEY:

Q Mr. Holodnak, during this period of time from '69 to the present, did you at any time receive unemployment benefits?

A I received unemployment benefits for the full six months. Yes.

Q All right. And what year would that have been?

A That was right after my termination, '69.

MR. COONEY: Thank you. I have nothing further, Your Honor.

MR. SOSNOFF: I have nothing further, Your Honor. You could step down, Mr. Holodnak.

Shall I call my next witness, Your Honor?

THE COURT: Yes.

MR. SOSNOFF: Joelle Dominski please.

J O E L L E F I S H M A N D O M I N S K I , called as a witness, having been first duly sworn, testified on her oath as follows:

THE CLERK: Please state your full name and address.

THE WITNESS: Joelle Fishman Dominski. J-o-e-l-l-e. F-i-s-h-m-a-n. D-o-m-i-n-s-k-i. 473 Elm Street, New Haven.

DIRECT EXAMINATION

BY MR. SOSNOFF:

Q Miss Dominski, in 1969, did you have any connection with the Aim News Letter?

A Yes. I was a staff member of the News Letter.

Q I am going to show you Page 13 of Exhibit 3 in evidence in this case which seems to have a listing of staff members and ask you if you are the Joelle Dominski that appears as this staff member in that issue of the News Letter?

A Yes. I am.

Q How long had you been associated at that time

with the Aim News Letter?

A For about a year.

Q Is the Aim News Letter still in existence?

A No. It is not, but there is a --

Q Is there a successor?

A There is a successor called Modern Times.

Q Now, in 1969, how long had the Aim News Letter been in existence?

A A couple of years.

Q What was the circulation of the Aim News Letter the average circulation in 1969?

A It was about 750.

Q How often were publications issued?

A It was either monthly or twice a month. I believe it was twice a month.

Q What was the general area of circulation of the News Letter, if you know?

A Well, it was concentrated in New Haven itself and there were some subscriptions in the greater New Haven area also.

Q Do you know whether the defendant Avco was a subscriber?

A I am not positive, but I think that it may have been.

Q But you don't know forsure; is that right?

A No.

Q Were other corporations subscribers?

A Yes. There were some corporations who subscribed.

Q Corporations or businesses in the area; is that right?

A Yes.

Q Now, is the Aim News Letter given away or was it sold?

A No. It was sold.

Q And what was the price? Do you know?

A It was twenty cents for an individual copy on the news stand, and I think the yearly subscription rate was $5.00.

Q Do I take it from that answer that the News Letter was both sold at news stands and it had a mailing subscription list; is that right?

A That is correct.

Q Will you tell us how the News Letter came into existence?

A Well, it was the voice of the American Independent Movement.

Q Which was what?

A Which was a political party which ran a congressional candidate in two years and which came out of it a group of people who were involved in the peace movement and

also some people who were involved in community action in New Haven.

Q Generally, was the staff and the members of Aim New Haven residents or in that area?

A Oh, yes. It was. I would say it was all New Haven residents. Yes.

Q Now, were members of the staff of the News Letter paid for their work?

A No. There was no -- everything was volunteer.

Q Were contributors paid for their work?

A No.

Q Was Michael Holodnak paid for his article?

A No.

Q Now, in a general way, what were the subject matters with which the Aim News Letter tended to deal; do you know?

A Well, it dealt with urban renewal and different issues that were of interest in New Haven, and it dealt with peace activities and it also dealt with questions of interest in the labor movement.

Q Were there other contributors who worked in factories to the Aim News Letter like Michael Holodnak; do you know?

A I think there were. Yes.

Q Following Michael Holodnak's dismissal, were

changes made in procedures at the News Letter in dealing with contributors of articles?

MR. COONEY: Objection. I don't see any materiality or relevance to the issues involved in this case whether changes were made at the newspaper or not.

THE COURT: What is the purpose?

MR. SOSNOFF: Well, I intend to elicit from this witness evidence as to how following Michael Holodnak's dismissal it was necessary to warn contributors that they could be affected on their jobs and the obvious chill this would have on the willingness of people to step forward and express their opinions.

THE COURT: I think I will allow the line of inquiry if this witness knows.

BY MR. SOSNOFF:

Q All right. Do you know whether following Michael Holodnak's dismissal there were changes in procedure at the Aim News Letter attributed to the dismissal; do you know?

A Well, I do know --

MR. COONEY: Well, may it please the Court, can we get a yes or no answer first?

THE WITNESS: Yes. The answer is yes.

BY MR. SOSNOFF:

Q Was your answer "yes" to my question?

A Yes.

Q Will you tell us what the changes were?

A There was quite a bit of concern, obviously, about this case, and as a result of that --

MR. COONEY: I am going to object, Your Honor.

THE COURT: Strike the answer.

BY MR. SOSNOFF:

Q Tell us what was done instead of feelings?

A I see. After that case, contributors were told about this incident and warned to be cautious because perhaps they might get into a similar circumstance.

Q And before the Holodnak dismissal, were those kind of warnings issued to contributors?

A No. It was left to the contributor's discretion.

MR. COONEY: Well, the witness has answered the question. I don't think she should volunteer any more information.

MR. SOSNOFF: I have no further questions.

MR. COONEY: I have no questions.

MR. SHEPRO: No questions, Your Honor.

MR. SOSNOFF: Excuse me. Do you have any questions, Your Honor?

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THE COURT: No.

MR. COONEY: Mr. Warren is right outside, Your Honor. I assume you want to call him next.

MR. SOSNOFF: Yes.

B E V E R L Y H. W A R R E N , called as a witness, having been first duly sworn, testified on his oath as follows:

THE CLERK: Please state your name and address.

THE WITNESS: Beverly H. Warren. 2090 North Street, Fairfield, Connecticut.

THE CLERK: You may be seated.

DIRECT EXAMINATION

BY MR. SOSNOFF:

Q General Warren, what is your position at Avco?

A I am the Vice President and General Manager of the Lycoming Division and also a Vice President of the Corporation.

Q Are you the chief executive officer of the Avco Lycoming Division?

A Yes. I am.

Q And to which superior do you report in the Company?

A I report directly to the President of the Avco Corporation.

Q And who is he?

A Our President is Mr. George Hogman.

Q Now, is the Avco Lycoming Division a separate corporation or is it just --

A No. It is not. It is an operating division of the Avco Corporation.

Q In 1969 at how many locations did the Avco Lycoming Division operate?

A We had the plant here in Stratford and also a plant in Charleston, South Carolina.

Q Now, is the plant in Charleston still in operation?

A I'm sorry.

Q Excuse me. Is the plant in Charleston still in operation?

A No. It is not.

Q And when did that close down?

A 1971, I believe. '71 or early '72. Very close there.

Q Now, which was the larger of the two plants?

A The Stratford plant is the largest.

Q Well, addressing ourselves now to the Stratford plant operations, I take it at that plant, you manufacture things; is that right?

A Yes. We did at both plants.

Q Now, can you tell us in 1969 what you were manufacturing at the Stratford plant?

A Well, the major part of the business was manufacturing gas turbine engines, basically of two models that had other sub-models, but I think it can be classified as the two models, the T-53 and the T-55, and we were also engaged at that time in building the reentry vehicles or popularly called the nose cones for the minuteman missiles. Another smaller line we had was building constant speed drives for the Navy, and we were also doing some sub-contract work for various people throughout the Country.

Q Now,who did you make the gas turbine engines for?

A We made the gas turbine engines -- as far as the usage of the gas turbine engines, they were largely made for the Army. It was about that period in time when there was a change in the actual buying office which had previously been done by the Air Force and it changed over to the Army.

Q So, basically, your gas turbine engines were bought by the Army; is that right?

A A large portion of them. They went to many other customers also.

Q I think you said the major part of your business was manufacturing gas turbine engines?

A That is right.

Q And those are the engines you manufactured for

the Army; is that right?

A That is the major customer, yes.

Q Based on the revenue to the Company from the manufacture of gas turbine engines, what percentage of the total revenues of the Avco Lycoming Division were attributable to the sales of gas turbine engines to the Army and the other work done for the Army in connection with gas turbine engines?

A 1969?

Q 1969.

A I couldn't give you a definitive answer. It was over fifty per cent.

Q For the gas turbine engines alone; is that correct?

A I don't want to give you a definitive answer, but I will say it was over fifty per cent.

Q I understand, but we are just talking about gas turbine engines.

A That is right.

Q Now, you also just told us that you built the nose cones or the reentry vehicles for the minutemen missiles; is that right?

A Right.

Q And you did that for the Air Force?

A Those contracts were with the Air Force.

Q And what percentage of the overall revenues in 1969 at the Avco Lycoming Division were attributable to your

work on the nose cones or the reentry vehicles?

A I don't remember.

Q You cannot give us an estimate at this time?

A No. I would be wrong in probably any estimate I gave you.

Q Did you bring any documents with you? These are questions that we previously went over in one form or another at the deposition in my office, aren't they?

A Basically.

Q During the deposition, you were unable to answer these questions. Since the deposition, did you make anyeffort to learn the answers to some of these questions?

A I did to a few of them, not to the ones you just asked.

Q Now, the gas turbine engines are placed in helicopters, aren't they?

A That is their major usage.

Q And you also manufactured something called the constant speed drive. Was that placed in fighter planes? What was that used for?

A Well, it could be placed in any plane. The actual application that we were concerned with is that it was with a fighter. I believe they also term it as a reconnaissance airplane.

Q And since you manufactured these for the Navy, I

take it it was a Naval airplane?

A Yes.

Q Now, did you have contracts with Government departments or agencies for the manufacture of the three items that we have just gone over, that is, the nose cones, the turbine engines and the constant speed drives?

A Yes. We had contracts with the Government.

Q Well, who did you have your contract with for the turbine engine?

A Well, again, as I mentioned a few moments ago, see, in the Defense Department they assign certain types of things to be bought by a single service even though all the services might use it. About that period of time, the Air Force was assigned the job of buying all gas turbine engines. However, it shifted over and the Army went to buying their own engines, and I believe it was just about that period of time when that occurred.

Q And who was your contract with for the nose cones?

MR. SHEEHY: This is in 1969?

MR. SOSNOFF: Yes, it is.

THE WITNESS: Well, that was always with the Air Force.

BY MR. SOSNOFF:

Q And I take it your constant speed drive contract was with the Navy?

A In part. In some cases, we -- in the early portions of the program, we contracted directly with Douglas Aircraft for the constant speed drive.

Q But I think you testified that you believe in 1969 your contract was with the Navy; is that right?

A I am not 100 per cent sure whether it was totally with the Navy or it might have been partially with the Douglas Aircraft Company at that time. But, however, for the purposes you are talking about, the main part of the procurement of the constant speed drive was made by the Navy.

Q Now, we have been talking about contracts with branches of the military service which in turn are part of the Defense Department, aren't they, these individual branches?

A (No response)

Q My question is: Are your contracts with the Defense Department or actually with the individual branches?

A Oh, yes. Each individual branch such as the Air Force, the Navy and the Army all have their own buying offices who do their contract work.

Q Now, am I to understand from your earlier answers that you cannot today tell me what the revenues were, the gross revenues were from the contracts relating to the three items we have been discussing, nose cones, constant speed drives, and gas turbine engines?

A Well, to bring them down into definitive percentages

back then I could not. I have already indicated --

Q I didn't ask you about definitive percentages. I asked you whether you could tell us what the gross revenue was in dollars?

A No. Not when I go to try to breaking them down.

Q Well, can you tell us what the gross revenue of the Avco Lycoming Division was from the entirety of the work done for all Government agencies in 1969?

MR. SHEEHY: I am going to object, Your Honor. I think that the witness has testified as to what the nature --

THE COURT: Yes. What is the relevance of this as to the exact figures? I suppose you are trying to show, are you not, that whatever the business may have amounted to, it is largely Government business?

MR. SOSNOFF: Yes, Your Honor.

THE COURT: Well, then what difference does it make what the exact amount is?

MR. SOSNOFF: I suppose Your Honor is right. He already testified the majority of his business was gas turbine engines.

THE WITNESS: To clarify that, I might say that we did have substantial business that was not Government business.

BY MR. SOSNOFF:

Q Could you tell us what percentage of your business was non-Government in 1969?

A No. I can't tell you in percentage, but I can tell you in figures. There's about $28,000,000.

Q Your gross revenues from non-Government business in '69 was $28,000,000; is that right? Is that your testimony?

A That is right.

THE COURT: What is this for?

MR. SOSNOFF: For non-Government business.

THE WITNESS: Or sales to others than to the United States Government.

BY MR. SOSNOFF:

Q Now that you told us that, General Warren, can you tell us what your gross revenues were from Government business?

MR. SHEEHY: I object again, Your Honor. He has given his answer. I don't see the relevance of it. He said "A substantial portion of the business was done with the Government". Why are we getting into the figures?

MR. SOSNOFF: I think it is odd, Your Honor, that he can tell us what non-Government revenues were and he can't tell us what the Government --

THE COURT: It may be odd, but the question

is how relevant is it?

MR. SOSNOFF: Well, we are trying to prove that, and I think we can prove the overwhelming proportion of this defense contract work was with the Government.

THE COURT: You already have.

BY MR. SOSNOFF:

Q Let me ask you this General Warren. Were the revenues from the Government contracts in excess of $28,000,000?

A Oh, yes.

Q You say "Oh, yes". Was it double $28,000,000?

A I have indicated that it was by far the large porportion of our business.

Q And from what you tell me in your deposition, the Avco Lycoming plant facilities cover an area of about 77 acres in Stratford; is that right?

A That is correct.

Q That is the land area. And on that land are numerous buildings and structures; is that right?

A Yes. There are.

Q And who has title to the land?

A The United States Government has title to the land and the buildings.

Q And in 1969 who owned most of the machinery and equipment used in the manufacturing process?

A The United States Government.

Q Now, when Avco was working on Government business at the Avco Lycoming plant, were they obligated to pay the Government any less or -- withdraw that.

When Avco was working on Government business at the Avco Lycoming plant, were any rental charges assessted against the Company by the Government for the use of the plant or equipment?

A Well, that question cannot be answered yes or no. Now, if you answer it in the pure terms of rent, as paying actual rent, the answer is no. But when you negotiate contracts with the Government, we operate under what is called "Awaited Guidelines" and when you are operating with Government equipment such as that, then you get minus points for your awaited guidelines, the fact they have them. So, in effect, yes, we pay rent because we do not negotiate as favorable a contract as people who are doing Government business who do not have Government equipment.

Q What you are telling us in that testimony, are you not, is when the Government determines what price to pay you for this work, they take into account --

A They take into account that they own the equipment.

Q They own the equipment and the plant?

A That is right.

Q And Avco has no capital investment in the plant

or equipment?

A No. That is not true. We have considerable capital investment of our own.

Q General Warren, your attorney can bring out any information --

MR. SHEEHY: He is answering the question. He is disagreeing with the answer which Mr. Sosnoff was inviting.

MR. SOSNOFF: Well, I didn't even finish my question. I would like to rephrase that.

BY MR. SOSNOFF:

Q The extent, General Warren, that the Government owns the land and the buildings and the Government owns the equipment, Avco has no capital investment in those items owned by the Government; isn't that correct?

A Not in the items owned by the Government.

Q Are you able from your own knowledge to tell us the dollar value of the real estate and equipment owned by the Government at the Avco Lycoming plant?

A No. I am truely not.

Q But there is no question in your mind that the dollar value of the Government plant and equipment -- I mean real estate and equipment exceeds the value of Avco's own equipment?

A No question at all.

Q Has the Government ever made any long term loans -- withdraw that.

Has the Government ever made any loans to Avco in connection with the operation at Avco?

MR. SHEEHY: I don't see the relevance to that, Your Honor.

MR. SOSNOFF: Well, it's another aspect of the Government's interest, the Federal interest in the operations of the Avco plant, Your Honor.

THE WITNESS: I don't mind answering it.

MR. SHEEHY: Go ahead.

THE WITNESS: Your question again was: Have we ever had any loans from the Government?

BY MR. SOSNOFF:

Q Yes.

A No.

Q How long has Avco been manufacturing gas turbine engines for any military service at the Stratford plant?

MR. SHEEHY: Well, I object again, Your Honor. We are talking about the year 1969, apparently, and Mr. Sosnoff is attempting to elicit information concerning that year. I don't see what any relevance this information would have if it is not in --

THE COURT: Well, I will permit this one

question and that ought to finish that subject.

MR. SOSNOFF: It would, Your Honor.

MR. SHEEHY: Thank you.

THE WITNESS: Well, as I indicated before, and I did not look this up since I talked with you, it was in the late fifties when we put together the first gas turbine engines for it, and I think that first sale was actually to the Air Force. I'm not sure.

BY MR. SOSNOFF:

Q Now, does the Defense Department maintain a test force of personnel at the Avco plant to oversee various aspects of the operations?

MR. SHEEHY: When?

MR. SOSNOFF: 1969.

THE WITNESS: Yes. To oversee the aspects of the operation in accordance with the agreements that we have made in the contracts.

BY MR. SOSNOFF:

Q You haven't brought any of those contracts with you, have you?

A No, sir.

Q Well, can you tell us what functions the Government Task Force has at the Avco plant?

MR. SHEEHY: I object, Your Honor. I don't

* * *

MR. SOSNOFF: Well, in the deposition, General Warren described the three specific functions that this Task Force engaged in, and I would like to bring that out.

THE COURT: Well, put your question.

BY MR. SOSNOFF:

Q Will you tell us what the three functions are as you described them on the deposition, if you recall what you said at the deposition?

A Well, there are numerous functions that the people do. I am not sure that I remember the three specific ones I mentioned that you are talking about. I think I did mention quality control.

Q You mentioned an auditing function, didn't you?

A In the quality control area, the Government people are there generally to see that we have a system of quality control that meets the standards of the specifications that we agreed to in the contract as we negotiated. They have the right under the terms of these contracts to look over our shoulder, if you will, as we do the inspection. They have the right to actually do inspection themselves which is rarely, if ever, exercised.

Q Now, what else does this Government Task Force do? Do they have auditing functions?

A Oh, yes.

Q Could you describe just briefly what those consist of?

A They audit our general accounting activities.

Q You mean they audit your books and records, is that what you are saying?

A Yes.

Q And didyou also state on your deposition that the Government Task Force at the plant has contract administration functions?

A Yes. They have contract administration functions.

Q And what do they consist of? Could you tell us?

A Again, generally overseeing that we are meeting the terms of the contract that we negotiated with the Government.

Q Now, do your contracts with the Government also have provisions for recapture of excess profits pursuant to the terms of the contract?

MR. SHEEHY: I object, Your Honor. I don't see the relevancy.

THE COURT: Yes. I think this is going too far afield, Mr. Sosnoff.

MR. SOSNOFF: All right, Your Honor. May I just call Your Honor's attention at this point to the fact that in an earlier case in

1967 I think it is cited in our trial memorandum, Judge Timbers who was then on the District Court here discussed Avco operations in the course of an application for an 80 day injunction against an intended strike by the union and it's really a pretty full discussion there of the military supply work in which they were engaged and how critical that was to the Viet Nam War effort. Based on Judge Timber's opinion, it would appear that Avco was making, if not all, almost all the helicopter engines needed in Viet Nam at that time. I point that out because there is as a matter of record a prior decision that spells out many of these matters. I wasn't aware of that decision prior to my examination of General Warren, but we found it later.

MR. SHEEHY: Well, I might just say for the record in regard to that decision that the defendant in this case, the defendant Avco, does not feel bound by the findings in that decision which are a totally different situation of the issues that are being litigated in this case, Your Honor.

BY MR. SOSNOFF:

Q Where did the military services accept delivery

of the things you manufactured for them?

A It's usually at the plant.

Q At the plant. And the materials are shipped out, as you said on your deposition, under military Government bills of lading; is that right?

A As a general procedure, they are.

Q Now, certain of the work conducted at the plant is confidential or secret; is that right?

MR. SHEEHY: I am going to object, Your Honor. I think we are going far afield again.

THE COURT: Well, what was that question?

MR. SOSNOFF: The question was whether certain work done at the plant is confidential or secret. It's a preliminary question to bringing out that the Government also oversees the security procedures at the Avco plant.

THE COURT: Well, how is that material?

MR. SOSNOFF: Well, it's another aspect of Government surveillance at the plant.

THE COURT: I suppose for that matter the contract requires certain security procedures, does it not?

THE WITNESS: Yes, sir. It certainly does as do all Government contracts if they are engaged in classified business.

MR. SOSNOFF: Is Your Honor sustaining the objection?

THE COURT: Pardon?

MR. SOSNOFF: Is Your Honor sustaining the objection?

THE COURT: Well, you have that much. I will sustain the objection, going any further along that line, yes.

MR. SOSNOFF: I have no further questions.

CROSS EXAMINATION

BY MR. SHEEHY:

Q General Warren, I believe you testified that Avco Lycoming which is in Stratford is a division of the Avco Corporation?

A That is true.

Q And can you tell us in what state the Avco Corporation is incorporated?

A Delaware, I believe.

Q And is it a privately owned corporation?

A Yes. It is.

Q And are the shares traded on the New York Stock Exchange?

A Yes. They are.

Q And I believe you testified that the plant in Stratford is owned by the Government, and I believe you also

testified that the Avco Lycoming Division has another plant in Charleston, South Carolina?

A We did have at the time in question that we are talking about.

Q In 1969? At that time by whom was that plant owned?

A It was owned by the Avco Corporation.

Q And during the period in question, namely, 1969, did Avco Lycoming engage in any commercial work?

A Very substantial work that was not for the United States Government and to some pure commerical work, true.

Q And I show you this document, General Warren, and ask you if you can identify it?

A Well, I'm sure it is an annual report for the Avco for 1969, yes.

MR. SHEEHY: I will offer it, Your Honor.

MR. SOSNOFF: May I see it? Before I look at it, can I ask the purpose of the offer? I am not sure of this at all.

THE COURT: Well, you have gone into these matters. This might be just what you were looking for.

MR. SOSNOFF: I doubt it, Your Honor. Your Honor, I am going to object to this. I did

confine my questions most exclusively to the operations of the Avco Lycoming Division in Stratford which is the Government owned plant. This is a financial report for the entire Avco Corporation. If it mentions the Avco Lycoming plant, I haven't found it. I'm sure it does somewhere, but I haven't found it. It is not obviously a highlight in this report. The report begins with references to Avco's insurance business, its consumer service business, its savings and loan business. None of this has any relation to the defense contracting operations we inquired about. Our subpoena was to produce materials that would add more detail to the contractual arrangements.

THE COURT: Well, the Lycoming Division was the major part of the operation, was it not? I think General Warren testified to that.

MR. SOSNOFF: No, Your Honor.

THE WITNESS: Not of the Avco Corporation, sir, as a whole.

MR. SOSNOFF: He was just saying there was -- the Avco Lycoming Division had two plants. The Stratford plant was a larger plant.

THE COURT: Well, I'm mistaken about that. Well, is there anything there that we need?

MR. SHEEHY: Your Honor, the claim is being made by the plaintiff in this case that, in effect, Avco Lycoming Division which is owned by Avco is in effect the fourth branch of the Federal Government. That is the claim he is trying to put across to the Court, and I am offering this annual report of the Avco Corporation for the purpose of showing and it so shows on Page 9 that 85 per cent of the business of the Avco Corporation is commercial -- is private.

THE COURT: In other plants?

MR. SHEEHY: In other plants.

MR. SOSNOFF: And I say that has nothing to do with this case. We are dealing with the Stratford division and that is what my questions were directed to.

THE COURT: Well, I will receive it for the purpose that counsel has just stated.

MR. SHEEHY: Thank you, Your Honor.

(Avco's Financial Report for 1969 received and marked Defendant's Exhibit E.)

BY MR. SHEEHY:

Q And in 1969 who paid the wages of the employees

at the Avco Lycoming Division?

A We did as a Company.

Q Avco Lycoming?

A Right.

MR. SHEEHY: No further questions, Your Honor.

MR. SHEPRO: I have nothing, Your Honor.

REDIRECT EXAMINATION

BY MR. SOSNOFF:

A General Warren, would you look at Pages 2 and 3 of your financial report? Now, in those pages the report describes the various divisions and subsidary operations of the Avco Company; is that right?

A Yes. Generally.

Q And for each of the operations listed there is a statement as to the locale of the operation; is that right?

A Yes.

Q Now, is the information on that page correct, to your knowledge?

A In so far as I know it is. I am sure it is. It has been audited.

Q One of the subsidaries of the Avco Corporation is the Paul Revere Life Insurance Company;is that right?

MR. SHEEHY: I think the document speaks for itself, Your Honor.

BY MR. SOSNOFF:

Q If you know?

A Yes. That is one of them.

Q And at the Avco Lycoming Division, is any of the work of the Paul Revere Life Insurance Company done? Does the Stratford plant engage in any of the work of the Paul Revere Life Insurance Company?

A No.

Q I take it the Avco Lycoming Division does the work specifically ascribed to it on Page 4, is that right, in this document?

A That is right.

Q And nothing else; is that right?

A Well, that is a very brief summary. Now, there may be a few other minor things, but you have got the major items all listed.

MR. SOSNOFF: Thank you. I have no other questions.

MR. SHEEHY: I have no further questions.

MR. SOSNOFF: Your Honor, it is my intention at this time to read the deposition of George Johnson which was taken in Colorado about the time of the pre-trial hearing in this case. I would be happy to read it. Perhaps Mr. Holodnak playing the role of George Johnson from

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the witness stand and I could ask him the questions and he could respond as Mr. Johnson.

THE COURT: You might do that, but I think we will take a brief recess first.

(Whereupon, the Court recessed at 11:25 A.M. and reconvened at 11:40 A.M.)

THE COURT: Mr. Sosnoff, would it save any time if I read that now instead of your having it read? Are there to be any objections to any part of it?

MR. COONEY: Well, may it please the Court, I would ask for, if it is easier, a blanket objection as to any statements that Mr. Johnson testifies to relating to anything that the late Edward G. Burstein told him or said to him which is a substantial part of the deposition, and I suppose I would also object to any of the three exhibits, the documents that were annexed to the deposition being two letters written by Mr. Johnson to Mr. Burstein as one being just self-serving and not admissible and a note made by him, and I guess an office memo note. The three of them are annexed to the last page of the deposition. I would object to those going into evidence, and I would also --

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there is one other. I have an objection to the answer given on Page 13 which, in effect, I think calls for an opinion. No proper foundation or basis was laid for it by Mr. Johnson. In view of those objections, I don't know whether it is easier to let Your Honor read them. I am willing to do that, however, Your Honor.

MR. SHEPRO: Union counsel makes similar objections for the same reasons, and in addition, I think the testimony of Mr. Johnson is totally irrelevant and immaterial to the issues of this case.

MR. SOSNOFF: We have already had the Court's ruling on Mr. Burstein's conversations with Mr. Holodnak, and I think this same issue is present in his conversation with Johnson.

THE COURT: What authority is there for not receiving the evidence as to what Burstein said?

MR. COONEY: May it please the Court, Mr. Burstein is not a party to this litigation. He is deceased, and as I understand the statute in Connecticut, statements or admissions, whether oral or written, made by a deceased person are admissible in a case if it is a suit by or against

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the estate of that person. That certainly doesn't apply to this particular case. I think the witness' testimony was that in reponse to --

THE COURT: But he was the attorney for the union, was he not?

MR. COONEY: Yes. And Mr. Holodnak testified in response to a question asked by Mr. Sosnoff that he was Mr. Holodnak's attorney. Now, I don't know where you draw the line.

THE COURT: That is one of the questions in the case, isn't it?

MR. COONEY: Well, I suppose it is, Your Honor, and not knowing the answer to the question at this time, I suppose I feel obligated to make the objection because I don't see how it would be admissible in this case against the defendant Avco Corporation, and even assuming he was the attorney for the union, I don't see why that in and of itself makes that statement admissible or any statement.

THE COURT: Well, while at the moment I am inclined to think it is admissible, I will take it and reserve decision on your motion to exclude it --

MR. COONEY: All right.

THE COURT: -- and consider that in due course and rule on it eventually.

MR. COONEY: Thank you, Your Honor.

MR. SOSNOFF: May I, for the record, just make a brief statement of my position of this issue, Your Honor?

THE COURT: Yes.

MR. SOSNOFF: First of all, I want to say that I dealt with it in a reply brief on the motion for summary judgment at some length, the claim that Burstein's material should be excluded, and the first thing I want to say is, for the most part, you will see when you read this transcript, and I have no objection to your reading it and you can read it at any time, Mr. Johnson testifies to what he did, his actions, and that certainly has no bearing on Mr. Burstein. They're not his expressions. They're Johnson's expressions. That's number one.

To the extent that Mr. Johnson reports Mr. Burstein's actions, we are not talking about hearsay statements. We are just talking about what Mr. Burstein did or did not do. For the most part, Mr. Johnson reports Mr. Burstein's

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inactions, but again, we are not talking about hearsay. To suggest that Mr. Burstein is not a party in this action, and I don't think it matters, and I don't think labor laws ever decided whether union counsel represents a union or the grievant. Obviously, he represents both. They both have parallel interests, I assume, and he speaks for both of them. The union being the representative of the grievant, the agent, the collective bargaining agent and counsel for the agent is obviously counsel for the grievant also. He is both. While the union and the company both in this case present the posture that Mr. Burstein adequately, competently, and in a very trustworthy and satisfactory manner represented Mr. Holodnak at the arbitration, that is one of their claims, they then seek to foreclose any contradictory evidence on that issue by claiming that while Burstein did the arbitration and what he said throughout the hearing is all admissible dispite the fact he is dead. Now, anything else you want to put in is excluded by some unspecified dead man's statute, and I want to make it clear, they have never made it clear, just what they are talking

about. For the most part, I haven't dealt with the dead man's statute for many years. If I recall, the purpose is to open up the possibility of bringing in hearsay testimony, not to foreclose it because when you have a dead man, it is impossible to get him to speak for himself, and the Connecticut law has been very broad in permitting hearsay statements or permitting testimony assertions through other persons what the dead man may have said. For the most part, I don't think that is critical here because Johnson reports what he did and what happened as a result of what he did or what didn't happen, and I think you will find that when you read the deposition.

THE COURT: Having that in mind, should I now read that?

MR. SOSNOFF: Yes. The original is probably in the file, but you may have my copy. (Hands document)

MR. COONEY: May I inquire, Your Honor? Has the original been filed with the Court, because I think Your Honor probably should have a copy of it ultimately.

MR. SOSNOFF: Yes. I filed it on the

motion for summary judgment.

MR. COONEY: I am sure you have it.

THE CLERK: A copy was filed, Your Honor, on June 4th of 1973.

MR. SOSNOFF: Here's the original. The original is also in the file, Your Honor. The original deposition is attached to our motion for summary judgment. There it is (indicating).

THE COURT: Give that back to Mr. Sosnoff.

MR. SOSNOFF: That came from the file too. Oh, this one.

THE CLERK: (Hands copy to Mr. Sosnoff).

THE COURT: Shall we mark this Plaintiff's Exhibit 15?

MR. SOSNOFF: Yes, Your Honor.

THE COURT: Will you mark this now, Mr. DeRosa?

THE CLERK: Yes, Your Honor.

(Original deposition of Mr. Johnson received and marked Plaintiff's Exhibit 15.)

THE COURT: I have finished reading it.

MR. SOSNOFF: I offer it, Your Honor.

THE COURT: I have read the whole deposition, so it is certainly in evidence.

MR. COONEY: I understand that, Your Honor.

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MR. SOSNOFF: Could we have it marked then as an exhibit?

THE COURT: All right.

THE CLERK: Plaintiff's Exhibit 15.

MR. SOSNOFF: Excuse me one moment, Your Honor.

Your Honor, there is really only one other point. In my trial memorandum, I mentioned that I would offer the Court a copy of the opinion in United States versus Avco Lycoming Division, Judge Timbers 1967 decision. Of course, that is available in the Federal Reports, but for your convenience for use immediately in this case, I thought I would offer it to you.

MR. COONEY: Well, I am going to object to it, not that Your Honor hasn't got a right to read it, but I object to it as being offered as evidence in this case.

THE COURT: No. It is not evidence. It is something which the Court can take such notice as may be appropriate, if any.

MR. COONEY: Right.

MR. SOSNOFF: It is a public record, Your Honor.

* * *

THOMAS R. SMARZ, called as a witness, having been first duly sworn, testified on his oath as follows:

THE CLERK: Please state your name and address.

THE WITNESS: Thomas R. Smarz, S-m-a-r-z. 14 Jarvis Drive, Ansonia, Connecticut.

DIRECT EXAMINATION

BY MR. SHEEHY:

Q During the period of time in question, particularly, May 28, 1968 --

THE COURT: You mean '69?

Q '69. I beg your pardon. And for the time following, could you tell us where you were employed?

A At Avco Lycoming Division, Stratford, Connecticut.

Q And in what capacity?

A I was manager, Labor Relations.

Q And I will show you this document and ask you if you can identify it. (Hands document)

A This document is a copy of the General Plant Conduct Rules posted at, I believe, about 35 various conspicuous locations throughout the entire division.

Q And is that the size of the document that is so posted?

A Yes. This is the size of the document posted on the bulletin board.

Q And during the period of time in question, was this document posted on those 35 or so bulletin boards?

A Yes. It was.

MR. SHEEHY: I will offer it, Your Honor.

MR. SOSNOFF: Can I ask you, Mr. Sheehy, is this document different in any way from the document that has already been offered in evidence?

MR. SHEEHY: It does, Your Honor. It differs in the size. This is the exact size of the document which is so posted on the bulletin board.

THE COURT: This is the same as Exhibit 5?

MR. SOSNOFF: Yes, Your Honor.

MR. SHEEHY: But this is the size (indicating)

MR. SOSNOFF: I would have no objection to substituting it for Exhibit 5, if that is the purpose for the offering. If you assure us that it is identical to Exhibit 5.

MR. SHEEHY: You can check for yourself.

MR. COONEY: I think if you compare them, Mr. Sosnoff, you will see.

MR. SOSNOFF: Without even comparing, on the recommendation of counsel that it is identical of Exhibit 5, I think it would make for a clearer record if current Exhibit 5 were returned to us.

THE COURT: How do you wish to do it, Mr. Sheehy?

MR. SHEEHY: I can have it marked as a Defendant's Exhibit and Mr. Sosnoff, if he would like to have it marked also in substitution for Plaintiff's.

THE COURT: But you would like to have it marked as Defendant's Exhibit G?

MR. SHEEHY: Yes, Your Honor.

MR. SOSNOFF: Well, then that is sufficient. I have no objection.

THE COURT: Very well.

(Copy of General Plant Conduct Rules received and marked Defendant's Exhibit G.)

MR. SHEPRO: Excuse me, Your Honor. Is that F or G?

THE CLERK: G.

MR. SHEPRO: May I ask what F was?

THE CLERK: F was a copy of the brief, Avco's brief on arbitration.

MR. SHEPRO: Thank you.

THE CLERK: Does counsel want this exhibit back?

MR. SHEEHY: No.

BY MR. SHEEHY:

Q Mr. Smarz, in your capacity at the Avco Lycoming Division, were you served with a copy of the complaint in this action?

A Yes. I was.

Q And showing you this document, I will ask you if this refreshes your recollection as to the date on which you were served with this complaint?

A Yes.

Q And could you tell the Court the date on which you were served with the complaint?

MR. SOSNOFF: I am going to object. I don't know the basis for these questions. Are you challenging service at this point?

MR. SHEEHY: We are challenging by way of special defense, Your Honor, that this action was not instituted in a timely fashion in accordance with the statute, and if I may read it to Your Honor, 9 U.S.C. 12 provides that:

"Notice of a motion to vacate an award must be certified upon the adverse party or his attorney within three months after the award is filed or delivered."

And that is the basis for the question, Your Honor.

MR. SOSNOFF: Well, Your Honor, this same matter that they are going into now has twice before been raised in this proceeding. It was raised on a motion to dismiss before Judge Zampano.

THE COURT: Well, I suppose the defendant wants to make a record on it again.

MR. SHEEHY: Yes, Your Honor.

THE COURT: Yes.

THE WITNESS: Your Honor, may I consult with counsel for a moment, please?

THE COURT: Certainly.

MR. SOSNOFF: May the record show that the witness is consulting with counsel.

BY MR. SHEEHY:

Q Can you tell the Court the date on which you were served with the complaint in this action?

A Yes. It was February 23, 1970.

Q And if Your Honor please, attached to the, I believe plaintiff's motion for summary judgement in this action or maybe it was ours, I'm not sure, is an exhibit in the Court file, an original affidavit of one Peter J. O'Connell who proports to have served the complaint in this action, and I would ask the Court to make that a defendant's exhibit in this case, and I can go through the file and get the original.

THE COURT: Service on the same date?

MR. SHEEHY: Yes, Your Honor.

THE COURT: Same service?

MR. SHEEHY: Same service.

THE CLERK: You want that as an exhibit?

MR. SHEEHY: Yes. I have a copy here, Your Honor, but if you want --

THE COURT: Very well. Mark the copy Exhibit H.

(Copy of Affidavit of Service received and marked Defendant's Exhibit H.)

MR. SOSNOFF: Your Honor, for the record, can I make our objection clear? It is our claim that this issue has already been decided twice in this Court, and it is, in effect, res judicata.

THE COURT: Well, it is already in the record of the case, but if counsel wants to get it in again, I take it it won't take us much time. It's already in.

MR. SHEEHY: It's already in, Your Honor. I have no further questions.

MR. SOSNOFF: I have no questions, of this witness.

MR. SHEPRO: No questions, Your Honor.

MR. SHEEHY: In addition, Your Honor, I

* * *

F R A N C I S S. G U I D A , called as a witness, having been first duly sworn, testified on his oath as follows:

THE CLERK: Please state your name and address.

THE WITNESS: Francis S. Guida. 3 White Bridge Lane, Beacon Falls, Connecticut.

DIRECT EXAMINATION

BY MR. SHEPRO:

Q On May 28, 1969, what was your occupation?

A Parts Inspector B.

Q For whom?

A Jim Parmley, Department 31Q.

Q Was that for Avco?

A Right.

Q Is that the same plant that Mr. Holodnak was employed by?

A Yes.

Q And how long had you been employed by Avco?

A Since August 8th, 1963.

Q And did you hold any position in the union Local 1010, a defendant in this action?

A I was a union steward.

Q And for how long were you a union steward prior to May 28, 1969?

A Approximately one year.

Q And as a union steward, what were your duties?

A To represent the people in my area to the best of my ability.

Q And what do you mean by represent them? In what situations would you do that?

A Well, if they have any difference of opinions between the Company and the union, if they don't think they're being treated fairly or if they have insurance problems. General things like that, or overtime problems.

Q Prior to May 28, 1969, had you known Mr. Holodnak?

A Yes.

Q In what connection?

A Well, he was a Parts A inspector on the floor.

Q And you knew him generally as an employee?

A Right.

Q Did you have any feelings toward him one way or the other, for or against him on May 28, 1969?

A No. I believe we got along pretty good to tell you the truth.

Q Did you know him socially?

A You mean outside the shop?

Q Outside the shop.

A No.

Q Now, concerning Mr. Holodnak's termination on

May 28, 1969, how had you come in contact with Mr. Holodnak?

A What way do you mean that?

Q Well, when did you first learn about his termination?

A Well, when I was told to report to Labor Relations.

Q By whom?

A By the Company. My foreman.

Q And was that May 28, 1969?

A Right.

Q What time of the day?

A It was around quarter after seven or seven thirty in the morning approximately. Somewheres around there.

Q And what did you do then?

A I think the first thing I did was I went to see Mike and I asked him if he knew what it was about and he didn't know, and then I got hold of my committeeman, Joe Mesick, and I believe we went down to Labor Relations from there. Joe tried to find out, but he couldn't find out what it was.

Q And what happened then?

A Well, we went to the hearing and then he brought out this Aim magazine or Aim paper it was.

Q Who did that?

A The Company.

Q Yes.

A And they told us that this was what the termination

hearing was going to be about, about the article that he wrote.

Q Did they mention any plant rule that they were going --

A Yes. They told us he was being terminated for plant rule 19.

Q And what happened then? Was this -- withdraw that. Was this a suprise to you?

A Yes.

Q And what happened then?

A Well, we went through the hearing and the Company wouldn't budge either way on it. We did ask for a lesser penalty to be given to the man, but they wouldn't move on it, so we wrote up the grievance when he was fired and we processed it.

Q Did you initially go outside with Mr. Holodnak?

A Right.

Q After you were told what the grievance was about?

A Right.

Q And did you review the article that the Company had charged that violated this plant conduct rule 19?

A Yes. We both read it.

Q And what was your feeling with respect to it, if you had any?

A Nothing really. You have quite a few thousand people in that shop and you are going to find a few people that

are unhappy or, you know, difference of opinions. That's common. You get used to it after a while.

Q Were statements made derogatory to the union?

A Well, there was some statements made, but it really didn't phase me that much.

Q Did you feel you didn't like Mr. Holodnak after that or what feeling did you have?

A No. My feeling was still the same really because I believe I called him up once and asked him how he was doing after the hearing.

Q So it didn't matter to you that certain accusations were made against the union itself?

A No. I don't exactly like to hear them made, but I don't let it affect me as far as my job goes to protect the people.

Q And after you read the article, did you and Mr. Mesick and Mr. Holodnak go back into the hearing?

A Right. We sat back with the Company again and tried to talk things out.

Q And you attempted to persuade the Company, did you?

A Yes.

Q Did you make a memorandum of that hearing?

A Yes.

Q Do you have that with you today?

A Yes. I have it down in my seat, in back there.

Q Would you turn to the page that that is on, please?

A You want me to read this out loud?

Q Do you have the page it is on?

A Yes.

Q And when did you make that?

A This was made on 5-28-1969.

Q The date of this hearing?

A Right.

Q And who made that?

A I did myself.

Q Is that in your writing?

A Yes.

Q And what does that book in general contain?

A What was going on at the hearing.

Q Well, there are other pages attached to it?

A Oh, well, other copies of hearings I have had before with other people.

Q So it is your custom to report what happens in hearings in that book?

A Right. Generally, when there's going to be a suspension or termination hearing.

MR. SHEPRO: May I have that Exhibit D marked for identification?

THE CLERK: (Hands document)

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MR. SHEPRO: Thank you.

Q Is this a typed statement of that, of those notes that you made?

A Yes.

Q Would you compare that to your notes in your book?

A It's the same thing.

Q Now, you have a statement that there is a date at the end and then another sentence, "Mike Holodnak lost arbitration decision and is taking it to Civil Court." that wasn't written on the 28th, was it?

A No.

Q Was that added later?

A I put that on myself for my own purpose.

Q You added that later?

A Right.

Q But the rest was written on May 28, 1969?

A Right.

Q After the hearing?

A Right.

MR. SHEPRO: I will offer the typed statement, Your Honor, unless counsel objects to the original.

MR. SOSNOFF: Your Honor, before I examine this exhibit, I would like to object on the grounds that the witness is here and he is perfectly able to testify as to what took place. I don't

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challenged.[333a]

THE COURT: Why don't we get down to whatever it is that you wish to direct the witness' attention to, if there is anything. Otherwise, this is just in addition to the 160 pages of Exhibit 8.

BY MR. SHEPRO:

Q Did Mr. Holodnak make statements during that hearing?

A Yes.

Q And what did he say at the hearing?

A Well, Mr. Holodnak made the statement that he wrote this article and that he signed it. He also said that he firmly believes in what he wrote, but that he was not -- it was not meant to cause any trouble in the shop or out of it. This article was just his own opinion on union and management in Lycoming. He also felt that other people should know that this is -- that maybe in time a better and stronger union could be formed to fight for the people's rights.

Q And did you as a result of Mr. Holodnak's termination do anything?

A I filed a grievance on his behalf and I had him sign it.

Q And what do you mean he signed a grievance? What does that do?

A Well, it brings his case into the next step.

Q And what does that involve?

A Third step. That's where the committeeman meets with Labor Relations and they discuss it, try to settle the problem there before they go to arbitration, if it is meant to be.

Q Is it voluntary on the union's part to carry it to that third step?

A No. It's all up to the committeeman.

Q You also do that?

A Not all the time. Most of the time I would say, but not all the time.

Q Is it fair to say the union could have said "No, Mike. We don't want to carry it any further."?

A Right.

Q It could have done that?

A It could have.

Q Was there any question in your mind to do that or did you take it to the next step immediately?

A No. As far as I was -- the union was concerned, it was going to the third step.

Q And you did that right away on the termination hearing on May 28, 1969?

A Right.

Q Were you present on the third step?

A No.

Q Were you present at any later steps?

A No.

Q You weren't present at the arbitration hearing?

A No.

Q Now, did you bring with you records as to seniority in 1969?

A I have some records here.

Q If Mr. Holodnak had continued in employment beyond May 28, 1969, can you indicate what employment, if any, he would have continued to have at Avco?

A Well, Mr. Holodnak would have been laid off on February -- approximately February 22, 1971 as an A inspector. I have copies here of people who have more seniority than Mr. Holodnak who had been laid off on the 22nd of February, 1971. Now, when he gets laid off as an A inspector, he would have had seniority to downgrade as a B.

Q Downgrade as a what, please?

A B inspector.

Q And is a B inspector paid at a lower rate?

A Right.

Q And that rate is indicated in the agreements between --

A In the labor agreement, yes.

Q The labor agreement in effect at that time?

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THE WITNESS: Oh, yes.

MR. SOSNOFF: The agreement is in evidence.

MR. SHEPRO: Would Your Honor like the witness to review that agreement to indicate to Your Honor what the pay scale would have been?

THE COURT: Well, it's not for me to produce the evidence. I suppose one of you has some interest in getting to the facts.

MR. SHEPRO: I will leave it to the plaintiff.

BY MR. SHEPRO:

Q In a case such as this, do you know whether there was a usual penalty for a violation of a plant conduct rule such as plant conduct rule 19?

A I don't believe I ever heard it used before where a man was terminated. I could be wrong, but as far as my knowledge goes, I don't believe I know of any body terminated for that rule.

Q That was an unusual penalty?

A Right.

Q And you as a union member didn't feel that he should be terminated?

A No. Not for that there, really.

Q Did you have conversations with your committeeman --

A Yes.

* * *

THE COURT: 3.86 plus eight?

THE WITNESS: Right.

BY MR. SOSNOFF:

Q Fifty cents an hour difference, is that what it comes to between small parts inspector A and small parts inspector B?

A Right. It would be approximately about fifty cents an hour.

Q In any event, the agreement establishes that; is that right?

A Right.

Q And you add the same eight cents onto the small parts inspector B that you do for the A; is that right?

A Yes.

Q Now, you testified that in the course of the hearing in the Company's labor relations office the morning of May 28th -- withdraw that question.

I'm going to show you a copy of Plaintiff's Exhibit 3, Mr. Guida, is that how you pronounce your name?

A Well, Guida.

Q I'm sorry, Mr. Guida. And ask you whether you received that the morning of May 28th or did you receive it before May 28th?

A No. I received it on that morning. This is the copy.

Q Before you received it, did you have any inkling that it would be coming?

A No. None what so ever.

Q Do you remember what time during the day you received it?

A I would say it was sometime in the morning, I believe. Around quarter after seven, seven thirty, approximately. Around there.

Q After you received this, you read it; is that right?

A Right.

Q Who gave it to you? Do you remember?

A My foreman.

Q Who is he?

A I believe it was Bob Keene at the time.

Q Did you have any discussion with him about it?

A Well, I asked him what it's for and he didn't know.

Q When you saw this, did you know that there was a discharge case in front of you at that time?

A No.

Q In other words, you can't tell from Plaintiff's Exhibit 3 what the nature of the disciplinary hearing is about, can you?

A No. You can't.

Q At any time before you went into the Company's labor relations office, did you have any idea about what this matter was about?

A No. I may have had an idea possibly from Mike, possibly, but it was vague. It turned out to be right in the long run. He just happened to mention it, maybe something about the magazine he wrote, but I just brushed it off really because I didn't think anything about the magazine to be truthful.

Q When did Mike tell you that, when you were standing outside?

A No. When I came down to first see him.

Q When was that?

A About quarter after seven, seven thirty.

Q Now, did you do anything about that information that Mr. Holodnak gave you that it might be about his article? Did you do anything?

A No. I talked to Mike and he wasn't sure about it either. We were just searching in the dark really, and I was with Mike from that moment on down to labor relations.

Q So until you walked into that meeting with Mr. Ashlaw and the other people who were present, you didn't even know what the discipline hearing was about; is that right?

A No. That is right.

Q Now, you stated in answer to one of Mr. Shepro's

questions that you asked the Company if there could be a lesser penalty?

A Right.

Q What sort of penalty did you have in mind?

MR. COONEY: Objection. It's not material or relevant.

THE COURT: What is this about?

MR. SOSNOFF: When Mr. Shepro was examining Mr. Guida, he asked him whether -- or Mr. Guida testified that in the disciplinary hearing in the Company's labor relations office he asked the Company whether instead of a termination when they found out it was termination, there could be a lesser penalty. My question is: What lesser penalty did you have in mind?

THE COURT: Well, what was in his mind, I don't see how that is material.

MR. SOSNOFF: Well, I think it is material Your Honor, but if you are going to sustain the objection, I would like to go on with this line of questioning.

THE COURT: Well, is there an objection?

MR. COONEY: Yes, Your Honor. I object to it.

THE COURT: All right. I will sustain it.

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THE WITNESS: Would you repeat the question, please?

BY MR. SOSNOFF:

Q I am not sure what it was, but I will give you a new question.

Did you at any time state to Mr. Ashlaw or anyone else from the Company present in the room what you thought would be an appropriate penalty?

A No. That I didn't.

Q Did you have in your mind a penalty that you were prepared to settle for?

A In my own mind?

Q Yes.

A Well, I would --

MR. COONEY: Well, if he can answer that yes or no, I think, Your Honor.

THE COURT: Did you have something in your mind at the time?

THE WITNESS: Yes.

BY MR. SOSNOFF:

Q What was the penalty you thought would be appropriate?

MR. COONEY: Objection.

THE COURT: Sustained.

MR. SOSNOFF: Exception, please, Your Honor.

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BY MR. SOSMOFF:

Q What did the Company say when you asked for a lesser penalty?

A They didn't want to know nothing about it. They wanted the man terminated.

Q And then what did you say when they said that?

A We argued.

Q Well, what did you say in the course of the argument? How did you argue?

A We told them we felt the penalty was too severe for what he had done.

Q Yes.

A And we felt very -- we were very definite to the fact that there was no way this man should be terminated for something like this. It was too severe of a penalty completely.

Q I think you stated to Mr. Shepro that in your experience you had never encountered a similar case, your experience as steward?

A Right.

Q You never encountered a similar case where a man was penalized at all for anything he wrote; is that right?

A Right.

Q In fact, how long had you been a steward?

A Well, I believe it was approximately one year.

Approximately somewheres around there to the date he was terminated.

Q During the year you were a steward, were there any rule 19 violations that you were called on to handle or process?

A Not me.

Q What in your judgment would have been an appropriate penalty, Mr. Guida? As a shop steward?

MR. COONEY: Objection, Your Honor.

THE COURT: Sustained.

BY MR. SOSNOFF:

Q When you asked for the lesser penalty for Mr. Holodnak, did you reach the judgement that the article Mr. Holodnak had published violated Rule 19?

MR. COONEY: I am going to object, Your Honor.

THE COURT: Sustained.

MR. COONEY: Thank you, Your Honor.

MR. SOSNOFF: I have no further questions.

CROSS EXAMINATION

BY MR. COONEY:

Q Mr. Guida, I just have one or two questions. May I see Defendant's Exhibit 3, the plant conduct rules? Gee. I'm sorry.

THE CLERK: (Hands document)

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MR. COONEY: Thank you.

Q Mr. Guida, as a steward, you are familiar with the plant conduct rules that were in effect in '69?

A Yes, sir.

Q I call your attention to this sentence. Would you tell me what it says and were you aware of its existence in 1969?

A "Offenses under these rules may be cause for suspension or discharge." Yes.

Q And was Rule 19 one of those rules at the time?

A Yes.

Q Now, you testified that you believed in 1971, February, the plaintiff probably would have been laid off from his position that he held at the time of his discharge; is that correct?

A Yes, sir.

Q And I think you also testified that he would have had an opportunity to work in a lower classification?

A Right.

Q Is it not also correct that he would not have to avail himself of that opportunity if he did not wish to?

A Right.

Q In other words, he could --

A He could have taken a layoff.

Q He could be laid off and collect unemployment?

A Right.

Q And if, for example, in Mr. Holodnak's case, if he physically was unable to do heavier type work that might be called for by Class B type work, he could take a layoff; isn't that correct?

A Right.

MR. COONEY: I have nothing further.

THE COURT: Is the Class B work a heavier type work necessarily?

THE WITNESS: It could be heavier. In certain instances it is heavier.

THE COURT: You say it is heavier?

THE WITNESS: In certain instances. In certain jobs. You got so many jobs, they vary.

RECROSS EXAMINATION

BY MR. SOSNOFF:

Q Are there some jobs that are lighter than the Class B people?

A Some are.

Q Some are bench work?

A I am talking about bench work now completely.

Q Some of the Class B jobs for small parts inspectors are easier than the Class A, aren't they?

A Oh, yes.

MR. SOSNOFF: Thank you.

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MR. SHEPRO: Nothing further.

RECROSS EXAMINATION

BY MR. COONEY:

Q Mr. Guida, it is perfectly clear that the job classification, Class B and certain instances covering all types of work, whether it is bench work or not, requires a heavier type work than the position Mr. Holodnak had when he was discharged?

A Yes.

MR. COONEY: Thank you. Nothing further.

MR. SHEPRO: Nothing further, Your Honor.

THE COURT: The witness is excused.

MR. SOSNOFF: Excuse me, Your Honor. There is one question. May I recall Mr. Guida for one question?

THE COURT: Yes.

RECROSS EXAMINATION

BY MR. SOSNOFF:

Q Mr. Guida, is it true that women do Class B work?

A Yes.

Q In fact, in 1969 when Mr. Holodnak was there, about 90 per cent of the Class B inspection work was done by women; isn't that true?

A I wouldn't say 90 per cent.

Q Would you say the majority of the work, Class B work?

A At that time.

Q In 1969?

A Right. That particular time I would say when he was there.

Q It was done by women; is that right?

A Maybe a little over 50 per cent.

Q A substantial part of the Class B work was done by women?

A Right.

MR. COONEY: May it please the Court, we are talking about 1971 though, aren't we, Mr. Guida?

THE WITNESS: Yes.

MR. COONEY: Thank you.

THE COURT: The same answer for 1971?

THE WITNESS: Right.

MR. COONEY: I have nothing further.

MR. SHEPRO: May I suggest we break for lunch, Your Honor, before my next witness or shall I call my next witness?

THE COURT: I think this would be a good place to take a recess and we will convene at ten minutes of two, 1:50.

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(Whereupon, Court recessed.)

MR. SHEPRO: May I proceed, Your Honor?

THE COURT: Yes.

MR. SHEPRO: I call Mr. Joseph Mesick.

J O S E P H W. M E S I C K , called as a witness, having been first duly sworn, testified on his oath as follows:

THE CLERK: Please state your name and address.

THE WITNESS: Joseph W. Mesick, M-e-s-i-c-k. 204 Kenwood Avenue, Stratford, Connecticut.

DIRECT EXAMINATION

BY MR. SHEPRO:

Q What is your present employment, sir?

A I work at Avco Lycoming, Stratford, Connecticut.

Q And were you working for Avco Lycoming in Stratford on May 28, 1969?

A Yes. I was.

Q And for how long have you worked for Avco?

A Since 1952.

Q And are you also a union official?

A Yes. I am.

Q When did you first become a union official?

A About 1956.

Q And in 1956, what was your title, if any?

A Steward in Local 1010.

Q And how long were you a steward?

A About fourteen years, and I became committeeman.

Q And when did you become a committeeman?

A 1958. I'm pretty sure it's 1958.

Q Were you a committeeman on May 28, 1969?

A Yes. I was.

Q And on that date, did you know Mr. Holodnak?

A Yes. I did.

Q What was your relationship to him prior to that date?

A I was a committeeman for Mr. Guida and six other stewards, and Mr. Guida represented Mr. Holodnak.

Q And as a committeeman, what did you do?

A I functioned a little higher than the stewards. The stewards function in one step. I function in the second step in any determinations or disciplinary actions that are pending to an employee. Arbitration case is the third step of the grievance procedure.

Q Could you keep your voice up, please? Specifically, with reference to Mr. Holodnak, did you know him outside of the plant?

A No.

Q And what kind of relationship did you have with him in the plant itself?

A Like I do with any other employee I represent. I say "Good morning" to them. I talk to them, you know. That's about as far as it went. No social.

Q You didn't have any feeling one way or another against him?

A No way at all.

Q Or for him?

A No way at all.

Q When was it that you first heard that Avco wished to terminate Mr. Holodnak?

A On the day we had the termination hearing. I think it was May 28, 1969.

Q And what time of day was that?

A Well, I found out about it I would say about seven thirty, quarter of eight when I was informed that there was going to be a hearing in Labor Relations.

Q Who told you that?

A I got a V.O. --

Q Pardon me?

A I got a V.O. stating so that there was going to be a hearing.

Q Was that a grievance form?

A No. It's a communicatian that the Company uses to inform the union about different stuff that is transpiring in the shop.

Q Did that specify why Mr. Holodnak was going to be terminated?

A No. It did not. It just said there would be a disciplinary hearing in Labor Relations.

Q When?

A I think it was 10:00 in the morning on that date.

Q And what did you then do?

A Well, I went down and talked to the steward and Mr. Holodnak.

Q The steward was Mr. Guida?

A Right.

Q And what transpired at that meeting?

A Well, I wanted to find out what Mike did or if he did anything that we would end up in a disciplinary hearing, and he didn't know, the steward didn't know. So I went down to Labor Relations and they told me I would find out at 10:00 in the morning when we had the hearing.

Q And so did the three of you then at 10:00 go to the hearing?

A Yes. We did.

Q And who was present for the Company?

A Mr. Ashlaw, Mr. Foster, it was either Mato Gavin or Bernie O'Neil. I don't know which one it was, and I think Gibby Palmer was there which is his foreman.

MR. SHEPRO: May I have that Exhibit D for

identification?

THE CLERK: (Hands document)

Q And what happened at that hearing?

A We went into the hearing, they told us what rule they were going to cite him for. I called for a recess to talk to the grievant -- I mean, not the grievant, Mr. Holodnak and the steward. We went out in the hall and discussed it, you know, the article and all that stuff. Then we went back in and we proceeded at the hearing.

Q What plant conduct rule did they say was violated?

A Plant conduct rule 19.

Q Did they also when they told you that show you the article?

A Yes.

Q And did they say that the violation was because of that article?

A Yes.

Q Had you seen that article prior to this meeting?

A No.

Q Were you aware that Mike wrote articles in general?

A Well, I heard rumors to the effect that Mike was an author, but I never read anything that he had published.

Q Had you been told anything, that he had published this specific article?

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A Excuse me?

Q Had you been told that Mike published this apecific article that was given to you on May 28, 1969?

A Yes. They told me in Labor Relations he published it because his name was on it.

Q Well, had you been told of this prior to this meeting?

A No.

Q When you went outside, did you have an opportunity to read that article?

A Yes. I did.

Q And did you do that?

A Definitely.

Q Were you aware at that time that the article said things derogatory against the union?

A Yes, I did.

Q Did that affect your relationship with Mr. Holodnak in any way?

A No way.

Q And why was that?

A Because as long as I have been an official in the union, there has been a lot of stuff rumored about the union and it doesn't affect me. It roles off me like water.

Q When you went back in, what did you indicate to the Company, if anything?

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A Well, after they told us what they wanted to do, it's normal procedure at a discipline hearing for us to ask the Company to either make it time off or make it a lesser offense to get the guy off the hook, which we did.

Q Did you contend at all that there was no violation?

A Yes. We contended there was no violation, and we also contended that the action they were taking was too severe.

Q And what was the result of your arguments?

A They terminated him.

Q And what did you then do?

A Mr. Guida instituted a grievance which was processed into the second step of the procedure. We took it into the third step of the procedure which the third step of the procedure is set up on a Thursday between the full shop committee and the Labor Relations representatives.

Q Did Mr. Guida ask you whether that step should be taken, that it should go to the third step?

A You want a yes or no answer?

Q Whatever the answer is.

A At the time we felt that he shouldn't have been terminated and we were pushing it all the way, which we did.

Q So you and Mr. Guida were together when he filed this grievance to the next step?

A Definitely.

Q And you concurred that that should be done?

A Right.

Q Was there any discussion that it shouldn't be done because of any reason?

A No way at all. No discussion at all.

Q What was the next step?

A The next step is the third step of the grievance procedure.

Q What happens during that step?

A The third step, as I said, it's the shop committee and Labor Relations representatives and we go over the grievance again, and at that point, I ask the Company if they will change their mind on their termination of Mr. Holodnak. They said "No". They gave us an answer in the third step, we put it into arbitration.

Q Before you put it into arbitration, did the committeeman meet to discuss the case?

A When the grievance is returned to the union hall on the Monday -- usually, it's the first Monday -- the second Monday following the Thursday we discussed the grievances and we discuss whether, you know, it goes into arbitration or we file the grievance out. It was discussed there and the committee as a body voted it into arbitration. It isn't a one man decision. Votes are made by the committeeman that is involved, seconded by another committeeman and the committee has a vote.

Q So you yourself being involved moved that it should go to arbitration?

A I did.

Q Do you recall who seconded it?

A Just take a random guess, I think it was Mr. Farrell.

Q And how many committeemen were at this meeting?

A Ten.

Q Do you recall what the vote was?

A Ten to zero.

Q All voted in favor of it?

A Yes, sir.

Q And how much discussion was there for doing that?

A Not too much discussion because we felt that plant conduct Rule 19 and as long as the majority of the committeemen sat there, nobody -- to the best of our knowledge, at the time nobody was terminated for Rule 19.

Q So you thought that Mr. Holodnak was unjustly terminated?

A Yes. We did.

Q And what next happened with respect to Mr. Holodnak and your participation?

A We went to arbitration.

Q And that was July 17, 1969 before Burten Turkus, the Arbitrater?

A Yes. It was.

Q When did you come to the arbitration on that day?

A About 9:00 in the morning. 9:00 or 9:15.

Q And when did Mr. Holodnak and Mr. Burstein arrive with respect to your arrival?

A I think, if I am not mistaken, that I met Mr. Holodnak when I got there, and then shortly Mr. Burstein showed up.

Q And what happened next?

A We had a room down the hall. We went down the room and we discussed the problem. We discussed the grievance again.

Q Did Mr. Booth or Mr. Souce come to the meeting, the President and Vice President of the union?

A To the arbitration meeting?

Q Yes.

A Yes. They were there.

Q Were they present at all when you went into the room with Mr. Burstein and Mr. Holodnak?

A No. They weren't.

Q Did Mr. Burstein during this meeting indicate any hostility toward Mr. Holodnak?

MR. SOSNOFF: I object to that question because it seems to me it is very leading. You might ask him what Mr. Burstein said rather

than a conclusory statement.

MR. SHEPRO: I will withdraw that, Your Honor.

BY MR. SHEPRO:

Q How did Mr. Burstein act toward Mr. Holodnak?

A Very nice.

Q What were the discussions that took place during this time?

A Just about the article that he wrote.

Q And did he review the file?

A Yes. He did.

Q Did Mr. Burstein see a copy of the article in question?

A Yes. He did.

Q And did he review that article with Mr. Holodnak?

A Yes. He did.

Q Do you recall anything else that Mr. Burstein did during this time?

A I think all he did was ask Mike if he wrote it and Mike said "Yes".

Q And anything else?

A To the best of my knowledge, no.

Q Were you present during the arbitration itself?

A I was.

Q To your knowledge, did anyone in the union, the

President, Vice President, committeeman or steward show any feeling toward Mr. Holodnak, partial one way or the other that would affect the arbitration and the union's getting counsel for Mr. Holodnak?

MR. SOSNOFF: I object to that question as it calls for a conclusory answer. It is suggestive and leading, and it is not the way to bring out this kind of information, if that is what he wishes.

THE COURT: Will you rephrase that?

MR. SHEPRO: I will try to rephrase that, Your Honor.

BY MR. SHEPRO:

Q Are you aware of how the union in general handled Mr. Holodnak's case?

A The union handled Mr. Holodnak's case to the best of their ability.

Q Did the union do anything unusual with respect to Mr. Holodnak's case?

A The only thing -- I might have to elaborate a little bit. The only thing that may have been unusual was to have Mr. Burstein present the case.

Q And why was that unusual?

A He was requested by Mr. Holodnak.

Q Who would normally represent the grievant at an arbitration?

A The shop chairman and the committeeman involved.

Q And was it up to the union to decide who should represent the grievant at arbitration?

A Yes.

Q So that Mr. Holodnak's requesting Mr. Burstein wasn't binding upon the union?

A No. We could have went alone with it.

Q But you did, in fact, obtain the services or the union obtained the services of Mr. Burstein?

A Yes. We did.

Q Because Mr. Holodnak had requested it?

A Yes, sir.

Q Now, with respect to the other procedures, taking the grievance from the second to the third step, did that have to be done or was it a voluntary thing upon the union?

A It could have filed a grievance out. In fact, when he was terminated, we didn't have to institute a grievance. We could have said "You're fired. You chase it." We could file out in any procedure, the second, third. We didn't have to go to arbitration with it. We could have filed the grievance out.

Q Did anyone ever say not to take it to arbitration or follow each step along?

A Everybody was in accordance that we should follow it to arbitration.

Q Do you today still feel that Mr. Holodnak was unjustly terminated?

A Yes.

Q And did you always contend from 1969 when he was fired that he should not have been terminated?

A You will have to repeat it. I think I got it right. I want to make sure.

Q Did you from 1969 when Mr. Holodnak was terminated, contend that he should not have been terminated?

A Right.

Q Right through the grievance procedure?

A All the steps. I figured he should have been in house.

MR. SHEPRO: Nothing further.

MR. SOSNOFF: I have no questions, Your Honor.

MR. COONEY: I have no questions, Your Honor.

THE COURT: When an arbitration takes place in a matter of this sort, does the union have to pay anything in order to have the arbitration held?

THE WITNESS: Well, at this time in point we had a permanent arbitrator which was Burton Turkus. He was our permanent arbitrator. Anytime we had a problem that we wanted to get quickly

* * *

FRANK GONTARZ, called as a witness, having been first duly sworn, testified on his oath as follows:

THE CLERK: Please state your name and address.

THE WITNESS: My name is Frank Gontarz, G-o-n-t-a-r-z. I live at 126 Stanley Road, Hamden, Connecticut.

DIRECT EXAMINATION

BY MR. SHEPRO:

Q Mr. Gontarz, where are you employed now?

A I work for the Service Employees International Union.

Q Did you in 1969 work for Avco Lycoming?

A Yes. I did.

Q And for how long? When were you first employed by Avco?

A I was hired January the 4th, 1960.

Q And did you become a union official?

A Yes. I did.

Q And when was that?

A I was first elected steward in 1962.

Q And how long were you a steward?

A I was a steward about a year, then I was elected committeeman on the third shift.

Q And did you subsequently become something else other than a committeeman?

A Yes. Then I went on the day shift and I ran for steward, and I got elected steward, and in 1965 --

Q You don't mean steward. You were a committeeman -- you were first a steward, then a committeeman, and then what?

A Then I was a steward again on the day shift, and I ran for recording secretary in 1965, and I got elected.

Q I see. And for how long were you a recording secretary?

A Until October of 1970.

Q And what were your duties as a recording secretary?

A As a recording secretary, it was my duty to keep track of communications between anyone who had any dealing with the union.

Q And did you come in contact with the grievance steps for Mr. Holodnak?

A Yes. I did.

Q When did you first come in contact with that?

A When the grievance was returned to the union after the second step disposition by the Company.

Q And what did you do with respect to that?

A It was my job then after I picked up the grievances from the Company prior to our shop committee meeting at which the union committeemen all met at the union office, usually on

a Monday afternoon, it was my job to prepare the agenda along with the shop chairman of the grievances as to which committeeman they belonged to, and I put that grievance on the agenda for our meeting for that Monday in the name of Joe Mesick.

Q Do you know when that was?

A The exact date I don't know without referring to the date on the grievance itself, but the grievances themselves all have dates as to when they were answered and when they were returned to the union office.

Q It was sometime in June of 1969?

A It could very well have been the end of May or the first couple days of June, yes. It was very -- it was swift. It was very quick.

Q And is this the committeeman meeting that Mr. Mesick just referred to?

A He referred to two committee meetings. The one committee meeting among the union officers. That is the meeting, yes.

Q Among the union officers?

A Yes.

Q Were you present when the union officers discussed Mr. Holodnak's case?

A Yes. I was.

Q What was discussed, please?

A The facts were brought up by Joe Mesick as to what

had happened at the hearing. He referred to conversations that took place among the employer and the grievant himself and the committee was rather surprised the Company took such action as they did.

Q Who was present at that meeting?

A By name?

Q Please.

A It's five years ago.

Q As best you can.

A Ralph Criscuolo, Bill Strout, Joe Mesick, Al Bartlett, Ray Page, Red Farrell.

Q You are saying these are the names of the committeemen?

A These are the committeemen, yes, and myself as well.

Q And was there a vote to put this into arbitration at this meeting?

A Well, the first meeting -- the first time the grievance is returned to the union office, at that time the procedure was then for the grievance to be placed on an agenda for third step hearings at which time collectively all the committeemen get another shot at the Company, including myself.

Q Was there any decision to be made at this meeting to do that?

A Oh, yes. It had to be approved by the majority

of the committee.

Q To put into that next step?

A Yes, which was almost automatic. As a matter of fact, in this particular case, it was. Joe Mesick said "I'm putting this on the agenda because they terminated Mike Holodnak."

Q Was there any discussion about the article Mr. Holodnak wrote?

A I don't remember.

Q Do you recall if anyone did not want to proceed with the grievance further?

A No. We did not get a negative answer from anyone ever.

Q After the next step where the Company refused to take back its position, what then happened with respect to you?

A The grievance was then again returned to the union office on another Monday. I think that date was probably June 18th or something if it -- in other words, about two weeks after it had been originally scheduled for the agenda, it usually gets back. At that time the committee again would go over the grievance or a lot of grievances one by one on an individual basis. They would examine all the facts in every grievance just as they did in Mike's, and they proceeded to vote the grievance into arbitration.

Q And they did Mr. Holodnak along with others on

this particular day?

A Yes. They did.

Q And was Mr. Holodnak's case then scheduled for arbitration?

A It wasn't. Mike's grievance was not scheduled for arbitration until sometime later. By that -- if I may explain how that happens?

Q Please.

A We first have to find out -- we have to arrive at a date as to when the arbitrator can come to Connecticut being that he is a New York attorney.

Q Yes.

A And we picked a date or two dates in this case. It was July 16th and 17th which was a Wednesday and a Thursday, and then myself, along with Thomas Smarz, the Manager of Labor Relations, would sit down and prepare an agenda based on recommendations given to me by committeemen as a unit, and being that it was always one of the rules that they abided by, terminations always went first. I think there was three terminations on that agenda for those two days.

Q Was Mr. Holodnak's termination and grievance procedure treated unusual in any respect at all?

A If you want to weigh whether or not he had an attorney handle the case for him, I would say yes, that was the unusual part of it, as far as the union administration is

concerned.

Q If an attorney didn't handle the grievance, who did?

A Well, either myself, Bill Strout or the committeeman himself.

Q Did you yourself handle many arbitrations?

A Yes. I have. I have had some experience at it.

Q Why didn't you obtain the services of an attorney?

A I felt myself perfectly capable of handling the cases. I have had many years of experience in arbitration cases, both watching and acting, and I was, I thought, myself capable.

Q Why in this case did you obtain the services of Mr. Burstein?

A It was not I that did that. It was Russ Booth, I think, if I've got my facts correct, that had originally contacted Ed for the specific reason of handling this case after a request had been made by Mike to our shop chairman.

Q And you didn't oppose that?

A Absolutely not. As a matter of fact, I thought it was a good idea.

Q Do you know who Mr. Burstein was?

A Oh, yes. I know who he is very well.

Q What contact had you had with Mr. Burstein?

A In 1965 or 1966, Ed Burstein was first hired by the local union on a retainer being that the facts that led up to it was the membership had requested that we hire an attorney, put him on a retainer. We solicited many attorneys from different law firms and the Executive Board along with the shop committee back in 1965 laid his capabilities against the capabilities of other attorneys, and they felt that Ed Burstein's background was the best.

Q Prior to that time, had the union employed other counsel?

A Yes. They had.

Q For how long a period, do you recall?

A Well, I was not recording secretary at that time. So I would not be able to say for how long, but I know that there was a large number of them coming and going.

Q Did Mr. Burstein -- withdraw that.

Was Mr. Burstein the only attorney that the union employed, to your knowledge, during 1965 to 1969?

A I would have to answer that with I really don't know. We could have had others.

Q You don't know of any?

A I don't know of any. No. See, their International sometimes sends an attorney down to help assist in cases. Now, I don't know. That could be yes, we have had others.

Q Do you remember any specific occasions where

Mr. Burstein represented employees through the union?

A Oh, yes.

Q Could you relate several?

MR. SOSNOFF: Your Honor, I haven't been objecting, but I think we have really gone too far.

THE COURT: Yes.

MR. SHEPRO: There is an allegation, Your Honor, in the complaint that Mr. Burstein didn't vigorously urge the plaintiff's case, and I would like to show Your Honor that Mr. Burstein was an experienced attorney in labor matters. I think it is relevant to that effect.

MR. SOSNOFF: Well, that has nothing to do with whether he vigorously urged the plaintiff's case. We have a transcript in evidence here. All parties agreed to the transcript going in. I don't think this is proving anything at all. We have no doubt Mr. Burstein was a member of the Bar of the State of Connecticut.

THE COURT: Would you go to something else?

MR. SHEPRO: All right, Your Honor.

BY MR. SHEPRO:

Q With respect to Mr. Holodnak's case, did you yourself review it with Mr. Burstein?

A Yes. I did.

Q Do you recall on what occasions?

A On the Monday prior to the arbitration case. Ed Burstein had been at the union office a good part of the day and was there for the specific reason of consulting with myself who had control of the paperwork and some background of the case being that I could sit on the outside without having to vote and give him some background of the case and which I did, and he met with us collectively, the whole shop committee including myself that Monday, discussed the case with the whole shop committee, and he was also at the union office another day that week which I do not recollect what day it was. That was a week where there was the arbitration in the middle or near the end of the week. We had our shop committee meeting also during that day with the Company plus ourselves. Ed was there one additional day plus that day he talked to the shop committee, and I believe prior to speaking to the shop committee, Ed had been to the union office and gathered some papers and brought some case history back on the particular case and had a conference with Russ Booth.

Q Do you know if Mr. Burstein had a copy of the article?

A There was a copy in the file. The copy was sent to us as evidence in the third step of the grievance procedure.

Q Did you review that file with Mr. Burstein?

A Yes. We did.

Q To your knowledge, was there ever any discussion by anyone, by the President, the Vice President, other officers, steward or committeeman not to proceed with the grievance procedure or arbitration?

A There was never such a discussion.

Q Is it your feeling that Mr. Holodnak at that time and even continuing today should not have been terminated?

A I honestly believe that he should not have been terminated.

MR. SHEPRO: Nothing further, Your Honor.

MR. SOSNOFF: I have no questions, Your Honor.

MR. COONEY: I have no questions, Your Honor.

MR. SHEPRO: We call Mr. Russell Booth, please.

RUSSELL R. BOOTH, called as a witness, having been first duly sworn, testified on his oath as follows:

THE CLERK: Please state your name and address.

THE WITNESS: My name is Russell R. Booth. I live at 331 Perth Hill Road, Monroe, Connecticut.

DIRECT EXAMINATION

BY MR. SHEPRO:

Q Mr. Booth, where are you presently employed?

A For Local 1010.

Q And what is your position with Local 1010?

A I am the President of the local union.

Q And for how long have you been President?

A It will be eight years in May.

Q That is 1966?

A Right.

Q And prior to that, had you been employed by Avco?

A For 23 years, yes, my total employment.

Q Okay. As President in 1969, what were your general duties?

A Well, negotiations, arbitrations, looking out for the health and welfare of the local union members.

Q Did Mr. Holodnak's termination case come to your

attention?

A Yes. After it was voted for arbitration.

Q And approximately when was that?

A Somewhere in June or July, 1969.

Q Would this refresh your memory, Notice to Appeal to Arbitration as to the dates involved?

A Well, it was in June, June 18, 1969.

Q And had the article that Mr. Holodnak wrote as the Company -- withdraw that.

Did the article that the Company thought violated plant conduct Rule 19 or Mr. Holodnak through the writing of that article come to your attention?

A Yes.

Q And did you ever receive a copy of that article?

A I did.

Q Did you consult with an attorney about that article and about Mr. Holodnak's grievance?

A You mean after Mr. Holodnak was terminated?

Q Yes.

A Yes. I did.

Q And with whom did you consult?

A Mr. Burstein.

Q Was he the union attorney at that time?

A It must be explained. Mr. Burstein was on a retainer and the retainer entailed attend membership meetings

if he was called upon by the membership, assisting in wildcat strikes, might come to the membership and discuss Workmen's Compensation with them, and many other things. When Mr. Burstein was brought into the service of an arbitration case, Mr. Burstein was paid seperately because the retainer did not engulf Court appearances or arbitration process.

Q Now, did you discuss this case of Mr. Holodnak prior to Mr. Holodnak's requesting an attorney for him?

A No, not really. No.

Q You went to Mr. Burstein after Mr. Holodnak requested an attorney?

A When Mr. Strout, the shop chairman, received a request from Mr. Holodnak, then I contacted Mr. Burstein.

Q And did the union, in fact, make provision for Mr. Burstein to represent Mr. Holodnak?

A At his request, yes, sir.

Q And who was to pay for that representation?

A The local union.

Q And did the local union, in fact, pay Mr. Burstein?

A Yes. We did.

Q Do you recall how much you paid him for that arbitration?

A It might have been 350 or $400.00. One thing I might add, it was said on the stand here that the arbitrator is on a retainer. The arbitrator was negotiated in his local

union in 1968 so we could offset the backlog of grievances. Initially, we paid Mr. Turkus 10,000 each, both the Company and the union. In 1970, when our fund started to dwindle because of fear of layoffs, we asked Mr. Turkus to reduce his fee to $6,000. In 1973 because of massive layoffs, we could no further continue to pay Mr. Turkus. We went to Federal Mediation which now handles arbitration cases.

Q But in 1969, Mr. Turkus didn't charge anymore or less for it?

A No. He was on retainer.

Q That was paid both by the Company and the union in equal amounts?

A As a negotiated benefit.

Q That was part of your negotiated contract agreement with the Company?

A In 1967.

Q Now, what discussions did you have with Mr. Burstein with respect to Mr. Holodnak's case?

A Well, we felt the article as written, many people have asked -- I have heard it said here yesterday and today, "What was the union's position when we read the article?" We weren't offended because I can say that it wasn't a nasty article as far as the local union is concerned because much nastier things have been said about us. When Mr. Burstein was given the article, we told Mr. Burstein to pursue this thing

with all dispatch. We felt Michael Holodnak should not have been terminated from Avco. We felt he should have been entitled to have his job.

Q So your instructions to Mr. Burstein were that he was to handle this in the best possible manner?

A That is true.

Q Did you at any time indicate to Mr. Burstein that the union was not happy with Mr. Holodnak and didn't care about him?

A Never.

Q Did Mr. Burstein ever in your presence indicate anything against Mr. Holodnak?

A No.

Q Were you present during the arbitration of Mr. Holodnak's grievance?

A Partially.

Q Was there anything said that was not on the record to Mr. Holodnak while you were present?

A No.

Q Anything derogatory to Mr. Holodnak said by Mr. Burstein?

A No, sir.

Q Did you ever have the impression that Mr. Burstein was hostile to Mr. Holodnak?

A At no time.

Q How many conversations do you think you had with Mr. Burstein with respect to Mr. Holodnak's grievance?

A Well, I would say about two or three specifically, in Mr. Holodnak's case, but Mr. Burstein was on many arbitration cases. I think we had a log of almost two or three hundred cases pending, arbitrations at that time. So we get into many facets of many arbitration cases.

Q Was there any question in your mind as to not taking Mr. Holodnak's grievance further in the arbitration?

A I might say I am not the one that votes it into arbitration or out of arbitration. That is solely done by the shop committee.

Q Do you ever express your opinion to the committeemen?

A At times.

Q Did you in this case?

A It wasn't necessary. They voted unanimously, ten members, to send us to arbitration.

Q What instructions did you give Mr. Burstein with respect to Mr. Holodnak's grievance and arbitration?

A It would be the same to Burstein as it was for Mr. Holodnak. When you bring a lawyer in, you expect him to give him the best of every bit of representation you possibly can.

Q Did you ask Mr. Burstein to restrict his represen-

tation in any way?

A Why would I hire him?

Q You gave him free reins?

A That is right.

Q You are not an attorney, are you?

A No.

Q Were you present prior to the arbitration when Mr. Burstein and Mr. Mesick and Mr. Holodnak were together?

A No. I wasn't in the room with them. Mr. Souce and I left the union office and many cases were getting ready for arbitration. We came into the office and I ran into Mike and Mr. Burstein and Mr. Mesick within the lobby and asked Mr. Holodnak if everything was all right, and he said it was. If at any time any grievant had said they weren't satisfied with representation, it was just as easy to cancel out the arbitration case and postpone it.

Q Mr. Holodnak didn't ask for that?

A No.

Q Now, you were present throughout this arbitration, were you not?

A Not at all times. If I received a call from the union office, I would leave the room. So I might have missed part of the testimony.

Q A few parts, but you were there most of the time?

A Most of the time, yes.

Q At any time during the time you were present, did you feel that Mr. Burstein was not acting properly or representing the best interests of Mr. Holodnak?

A No.

Q Do you feel Mr. Holodnak was unjustly terminated in 1969?

A I do. That is what we arbitrated.

Q You felt that way in 1969 and you feel that way today?

A I do.

MR. SHEPRO: Nothing further, Your Honor.

MR. SOSNOFF: I have no questions, Your Honor.

MR. COONEY: I have just one or two questions Your Honor.

CROSS EXAMINATION

BY MR. COONEY:

Q Mr. Booth, do you recall signing an affidavit dated June 15,1973 relating to a summary judgment that was filed in this case?

A Which part do you mean?

Q I am interested in this part here (indicating).

A Right.

Q See, this is what was prepared for your signature.

A Right.

Q And I call your attention to the fact that prior to signing this affidavit, were you shown and given an opportunity to read an affidavit that had been prepared and signed by the plaintiff in this case?

A Yes.

Q And I call your attention to Page 8 of a copy of the plaintiff's affidavit that was filed in this case, fifteen pages, beginning with the paragraph on the bottom of Page 8 which starts with the words "After reading the article, Attorney Burstein turned to me and said "If I were the union, I wouldn't defend you either."

And in your affidavit and based upon your recollection today at the trial, were you present when or I will withdraw that.

Did Mr. Burstein make any such statement?

A No, sir.

Q What is your answer?

A No.

MR. SOSNOFF: Before that answer goes in, I object to it, Your Honor. The witness testified in answer to questions of his own attorney that he was not in the room when Mr. Holodnak was in the room with Mr. Burstein. That was the prior testimony of this witness. He was not present. He said he met them in the lobby. That was his

testimony.

MR. COONEY: May it please the Court, it has been established that this conversation did not happen in the room by the plaintiff's own testimony, but it happened outside the room, not in the room.

MR. SOSNOFF: I disagree with that. That is not the testimony.

MR. COONEY: Well, I claim it and I am sure Your Honor's recollection will control.

THE COURT: Well, in any event, this witness did not hear Mr.Burstein make that statement.

MR. COONEY: That is right.

BY MR. COONEY:

Q And is it further correct that based upon the statements made on Pages 8 and 9 in the plaintiff's affidavit in support of his motion for summary judgment, you indicated in your affidavit on Page 2 that the statements made by Mr. Burstein were not true; isn't that correct?

A That is right.

MR. SOSNOFF: I object to this question. The witness is on the stand. He has already been asked what Mr. Burstein said, and he said he wasn't there. Now he is being asked to compare affidavits and say what one indicates about the

other. It's wholey improper, Your Honor.

THE WITNESS: Your Honor, may I ask a question?

MR. COONEY: No. I don't think so.

THE WITNESS: I was asking the Judge.

MR. COONEY: Yes. There is no question pending.

THE COURT: Can I have the last exhibit, Exhibit I?

MR. SHEPRO: May I consult with the witness, Your Honor?

MR. COONEY: I was going to ask one other question, that is a very minor question.

BY MR. COONEY:

Q Is it correct, at least as of today, is Mr. Souce still in the hospital?

A Yes, he is, sir.

Q And Mr. Souce is the Vice President?

A Yes. He is.

MR. COONEY: I have nothing further, Your Honor.

MR. SOSNOFF: May the record show that Mr. Shepro is consulting with Mr. Booth.

MR. SHEPRO: Just one question, Your Honor.

REDIRECT EXAMINATION

BY MR. SHEPRO:

Q When did Mr. Souce go into the hospital?

A Saturday afternoon. Emergency operation.

Q It was an emergency?

A Yes.

MR. SHEPRO: I have nothing further, Your Honor.

MR. SOSNOFF: I would like to recall Mr. Holodnak for a few questions.

THE COURT: Has the union rested?

MR. SOSNOFF: He said he had nothing further.

MR. COONEY: Of this witness.

MR. SOSNOFF: I'm sorry, Your Honor.

THE COURT: Let's wait a minute.

MR. SHEPRO: I rest, Your Honor.

MICHAEL HOLODNAK, recalled as a witness, having been previously duly sworn, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. SOSNOFF:

Q Mr. Holodnak, you heard the testimony of Mr. Guida, did you not?

A Yes.

Q And he testified that based on his calculations of seniority and layoffs at the plant that you would have been laid off from your job as small parts inspector A sometime around February 22, 1971; is that right?

A Yes.

Q And then he has further testified that you could have, as did other small parts inspectors A, move down to a small parts inspector B position; is that right?

A Yes.

Q Are you familiar with the work of the small parts inspector B?

A Yes.

Q Predominately, who does that work in the plant?

A The major part of that work had been done by women.

Q Now, on February 22, 1971 and thereabouts, were you capable of doing the work of the small parts inspector B?

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A Yes.

Q Can you tell us briefly just what that work involved?

A Well, basically, it's bench inspection. Small parts are placed on a bench or in a cart beside a bench where you have an inspection plate, various gauges, and basically, most of it is done sitting down although there is some requirements of getting the work and bringing it to the bench.

Q Is it harder work or easier work than small parts inspector A?

MR. COONEY: I am going to object, Your Honor. I think the characterization "harder or easier work" leaves a lot to be desired as far as a proper question goes.

MR. SOSNOFF: This witness has worked in the plant for nine years.

THE COURT: Yes.

MR. COONEY: Harder or easier as to what?

BY MR. SOSNOFF:

Q Is it physically --

MR. COONEY: Well, wait a second, please, Mr. Sosnoff. There is an objection pending.

THE COURT: Yes. I will sustain that, then you put in another question.

BY MR. SOSNOFF:

Q Is the work of a small parts inspector B physically easier or physically harder than a small parts inspector A? If it is, explain your answer.

A I would say it is easier.

Q Why?

A Well, because as I stated, basically, it is a sitting down job as opposed to a floor inspector who is required to cover a lot of ground, and he has several sections of a department to take care of, and he has to be on his feet all day long, and a small parts inspector B, as I say, is a sitting down job, basically.

Q Were you capable of doing the work of a small parts inspector B on February 22, 1971?

A Definitely. Yes.

Q And have you been capable since that date?

A Yes.

MR. SOSNOFF: No further questions.

CROSS EXAMINATION

BY MR. COONEY:

Q Mr. Holodnak, isn't it correct, in order to do the job of the classification of a parts inspector -- in the first place, the classification is not a small parts inspector, isn't that right? It's a parts inspector is the classification?

A Yes. It is.

Q It doesn't limit it to small parts; isn't that right?

A All parts involving the engine are basically small parts.

Q What is the heaviest part involved that you would have to move over to the bench or pick up and put on the bench?

A Well, I was working on a 31 cubic width power parts, and I think they are the heaviest.

Q How heavy are they?

A Oh, they are I can estimate 30 pounds or so, I couldn't tell you exactly.

Q In 1971, did the classification of parts inspector have to lift any parts that were heavier than 30 pounds, to your knowledge?

A Basically, there was mostly smaller parts than that.

Q That is to your knowledge; is that right?

A To my knowledge, 99 per cent of it was smaller than that, yes.

Q And at the time in 1969, did you have some physical --

MR. SOSNOFF: '71.

MR. COONEY: Please, Mr. Sosnoff. Can I ask my own questions or file an objection.

PLAINTIFF'S EXHIBIT 2.

ARTICLE I
RECOGNITION

Section 1.

The Company recognizes the Union as the sole and exclusive bargaining agent for all hourly paid maintenance and production employees and salaried plant clerical employees employed in the plant located in Stratford, Connecticut, or any extension or additions to the existing plant, excluding executives, supervisory, managerial, confidential, professional, technical, office clerical employees, department confidential clerks, time study men, and all other salaried employees, guards and watchmen.

Section 2.

Department confidential clerks shall include only those clerks whose work assignments include the handling of personnel records, grievance records, and such related confidential matters. Where the services of a department confidential clerk are required, the inclusion or exclusion of clerks will be determined by the actual work performed; however, confidential functions will not be distributed among clerks in such a manner as to exclude more clerks from the bargaining unit than are actually necessary to perform the available confidential functions. The Union will be advised of replacements or additions in this classification.

Section 3.

Employees outside the bargaining unit will not perform work (including experimental work) which is normally performed by or normally considered to be bargaining unit work.

Section 4.

During the first sixty (60) calendar days of employment, new employees shall be considered probationary employees. The Company shall be the sole judge of the requirements and qualifications of applicants for work, and shall be the sole judge of the qualifications of such probationary employees for retention in the employ of the Company.

EXHIBIT NO. 2

ARTICLE IV

GRIEVANCE PROCEDURE

Section 1.

A grievance is a difference of opinion between the Company and the Union or an employee involving the interpretation or application of the terms of this Agreement. A grievance will be advanced to a higher level of supervision in each succeeding step of the procedure. All grievances shall be settled in the following manner:

Step 1.

Between the aggrieved employee and the department Foreman together with the Steward or between the Foreman and the Steward. If the oral grievance is not satisfactorily adjusted by the Foreman within one working day after the grievance has been submitted to him, the aggrieved employee or the employee's Steward shall immediately reduce it to writing in quadruplicate on a grievance form provided by the Company and present it to the Foreman for his answer and signature. No individual grievance shall be valid unless personally signed by the aggrieved employee. Three (3) copies shall be returned by the Foreman within one working day thereafter. Nothing herein shall be interpreted as denying an employee the right to present his grievance directly to Management as provided in the Labor Management Relations Act of 1947 as amended.

Step 2.

If no satisfactory settlement is reached in Step 1, the grievance shall then be referred in writing by the Steward and the Plant Committeeman in whose area the grievance arose, within two (2) working days thereafter to the designated Company representative. *In the case of an individual grievance*, the Company representative shall meet with the *grievant*, Steward, and Committeeman within two (2) working days, and give his written disposition of the grievance. *Where the grievance involves a group of employees, the Company representative shall meet with one grievant, the Steward and Committeeman.* In the event the grievance has not been processed in this step, the Steward and grievant involved shall be permitted to attend the meeting of the Company and the Plant Committee at the third step of the Grievance Procedure.

Step 3.

If no satisfactory settlement of the grievance is reached in Step 2, the grievance shall be referred in writing on the agenda of the next Management-Union meeting by the Tuesday following the Second Step answer. The President and Vice President of the Union may be present during consideration of grievances in this Step. The Company shall not be obliged to pay for time lost from work as a result of attendance at such meetings to more than the *three (3)* (or *four (4)* in the event of the temporary addition of one member in accordance with Article III, Section 1) night shift members of the Plant Committee and five (5) day shift members of the Plant Committee plus the Recording Secretary of the Union; provided, that in no event shall the night shift members of the Plant Committee or the Recording Secretary of the Union receive more than *six (6)* hours pay for time lost as a result of such meeting attendance. When there are grievances to be considered, these committees shall

EXHIBIT NO. 2

meet once each week on a day mutually agreed upon for the purpose of settling grievances referred to this Step. An International Representative of the Union may participate in these meetings at the request of the Local Union. Grievances to be discussed at any such weekly meeting must have been referred to the Company at least two (2) working days prior to the date of such weekly meeting. The Plant Union Committee shall be given a written answer to all grievances discussed at this Step on the second Monday following this meeting, unless otherwise agreed to. Minutes of each meeting shall be taken by a Company representative and upon acceptance by The Shop Chairman or other duly authorized representative of the Union shall become the official minutes of the meeting, acceptance to be indicated by signature.

Step 4.

a. *Burton Turkus shall serve as permanent arbitrator during the term of this Agreement except that either party shall have the opportunity to terminate his services effective October 16, 1969, by giving notice in writing to the other party at least ten (10) days in advance. Benjamin Roberts, Abraham Stockman, and Emanuel Stein shall substitute for Mr. Turkus as permanent arbitrator during his term in the order named in the event of his non-availability. Benjamin Roberts shall be removed from the substitute list and become permanent arbitrator for the balance of the term of this Agreement in the event either party shall terminate the services of Mr. Turkus in the manner provided above.*

b. Any grievance which has not been settled in the preceding Step 3 may be referred in writing *by the Union to the arbitrator* within fifteen (15) days from the date the written answer was given *by the Company in Step* 3 and a copy of such referral shall be sent to the Company. Arbitration shall proceed under the voluntary *labor* arbitration rules then obtaining of the American Arbitration Association. *The Arbitrator* shall consider *a properly submitted* grievance *without delay and shall render his decision promptly*. The decision of the *Arbitrator* shall be final and binding.

c. The jurisdiction of the *Arbitrator* shall be limited to determining questions involving the interpretation, application or alleged violation of the terms of this Agreement. *He* shall have no authority to add to, subtract from, or change any of the terms of this Agreement, including the existing wage structure, production standards, or job classifications as set forth in Appendix "A", attached hereto. The cost of the services of the *Arbitrator* shall be borne equally by the parties hereto.

It is understood between the Company and the Union that not more than one grievance shall be arbitrated *in* any one *proceeding* unless the parties agree in advance that additional grievances shall be arbitrated or where more than one grievance is to be arbitrated and each involves the same basic issue; *however, nothing contained herein shall be construed to preclude scheduling of consecutive proceedings by the Arbitrator or the holding of more than one proceeding in a day.*

Section 2.

Grievances of a general nature may be referred by the Union to Step 2 of the Grievance Procedure, and such grievances shall be subject to arbitration as provided for in such procedure.

EXHIBIT NO. 2

Section 3.

A grievance shall be deemed to have been settled on the basis of the Company's disposition given in accordance with the procedures set forth in Section 1 hereof if not appealed by the Union to the next step of the grievance procedure within the applicable time limitations provided therein. Where the Company has not answered a written grievance within the time limits prescribed for the first two steps of the grievance procedure, the grievance shall automatically advance to the next step.

Section 4.

a. Employees shall file grievances promptly. No grievance shall be valid unless submitted within ten (10) working days after the employee or the Union knew, or by reasonable diligence could have known, of the facts giving rise to the grievance.

b. Except as provided in paragraph (c) hereof, the Company shall not be required to pay back pay for any period in excess of ten (10) working days prior to the time a written grievance is properly filed with the Company.

c. When it is established through the grievance procedure that an employee was not properly recalled to work following a layoff, under circumstances which made it impossible for the employee and the Union to know the facts, the Company shall be liable for back pay for a period not to exceed fourteen (14) days prior to the date such written grievance was filed with the Company. *In such circumstances the employee would be reinstated with full seniority, and would receive Pension credited service for the period of time he would have worked had he been properly recalled.*

d. "Back pay" as used in sub-paragraph (c) hereof shall be an amount equal to the wages the employee would have earned, less any amounts actually earned elsewhere or received as unemployment compensation during the period for which the Company may be liable.

e. Whenever the Company assumes the responsibility for back pay through the settlement of a grievance or an arbitrator's award, the Company will make such payment within ten (10) days *in the case of the settlement of a grievance and within thirty (30) days in the case of the settlement of an arbitration.*

f. *The Company will schedule and hold hearings in Steps 1 and 2 during normal shift hours only, unless the parties mutually agree to times outside of such hours.*

EXHIBIT NO. 2

ARTICLE V
DISCHARGE AND DISCIPLINE

Section 1

a. The Company shall have the right to discharge or discipline employees for just cause.

b. If an employee is discharged or suspended, he may be required to leave the plant immediately. As soon as possible after an employee is notified of such discharge or suspension, the Steward shall be notified in writing and the Committeeman shall be advised of such action and the discharge or suspension shall not be effective for a period of one working day after such written notification during which time arrangements will be made for an immediate hearing. *The hearing shall be conducted during the normal shift hours of the employee so discharged or suspended; however, the Company shall not be obligated to pay any such employee who had previously been required to leave the plant for time spent in hearing unless and until it shall be determined that suspension or discharge spanning the time of hearing was improper under this Agreement.*

c. Any grievance which arises under this Section shall be submitted directly to the Second Step of the Grievance Procedure and the suspension or discharge hearing referred to in paragraph (b) above shall be considered as Step 2 of the Grievance Procedure. A grievance arising under this Section must be presented in writing within two (2) working days following the suspension or discharge. In instances where the discharged employee's whereabouts are unknown or he cannot be located within the said two (2) working days, the time for filing the discharge grievance shall be extended an additional eight (8) working days.

d. If it is found that an employee was improperly disciplined and the parties cannot agree between themselves, the arbitrator may rule on the restoration of status and/or the amount of back pay.

e. Paragraphs (b), (c), and (d) do not apply to Probationary Employees.

Section 2.

a. Company records of warnings or other disciplinary action with respect to any employee, which are intended for purposes of possible later discipline, shall be in writing, a copy of which shall be given to the employee and the Union. If a warning notice is changed or withdrawn, both the employee and the Union shall be notified in writing.

b. Written warnings issued for infractions of or violation of Company rules warranting disciplinary action will be issued within ten (10) days from the date the Company has knowledge of the infraction or violation, otherwise the letters are invalid. A written warning may be issued for accumulated violations at any time, provided the warning is issued within ten (10) days of the last violation.

c. The employee shall have a right to challenge written warnings under the Grievance Procedure.

d. With the exception of discharge, these records for an employee shall become ineffective as soon as one year has passed without his receiving any additional warnings or disciplinary actions for the same offense and shall be removed from the employment folder. Written warnings issued more than five (5) years prior to the date of a discharge shall not be considered part of the record of an employee in a discharge case.

EXHIBIT NO. 2

ARTICLE XVI

review by the Grievance Procedure, shall automatically constitute a voluntary resignation of employment.

Section 4.

The Company reserves the right to publish factory rules and regulations from time to time. Such rules as published are subject to changes, additions or deletions by the Company.

The Company will notify the Union five (5) days in advance of a change of new rules or changes in existing rules. New rules or changes in existing rules will be reasonable.

Section 5.

Employees shall be allowed *a five (5) minute personal wash-up* period immediately before the lunch period and before the end of the shift. An employee shall leave his *assigned work station* clean before departing at end of his shift.

Section 6.

Smoking shall be permitted in the Plant except in areas designated as "NO SMOKING" zones. Abuses of the smoking privilege by creating a fire hazard or littering the floor may subject the employees to discipline.

Section 7.

The Company will furnish job description sheets covering all jobs included in the bargaining unit as set forth in Article I, Section 1 of this Agreement. The Union agrees to keep such information confidential and will not divulge such information without specific approval of the Company.

Job classifications should not be changed unless there is a major change in the content of the job.

a. When a job is downgraded as a result of a re-evaluation, the following provisions shall govern:

(1) An incubent employee classified in a job which is downgraded snall receive the same rate of pay being paid to him at the time the job is downgraded.

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PLAINTIFF'S EXHIBIT 3.

AVCO LYCOMING DIVISION

AVOID VERBAL ORDERS

AL 100

Labor Relations, Employee, Foreman, Union (2), File | DEPT. NO. | DATE 5/28/69

SUBJECT Disciplinary Hearing - M. Holodnak, Clock #2838, Dept. 31Q

There will be a disciplinary hearing as outlined under the provisions of Article V, Section 1b of the Labor Agreement on May 28, 1969 at 10:00 AM in Labor Relations.

FROM J. Tennis, Foreman | DEPT. NO. 31Q | EXT.

REPLY

SIGNED | DATE

RECIPIENT: RETAIN WHITE COPY, RETURN PINK COPY

PLAINTIFF'S EXHIBIT 4.

WHY THE UAW LOCAL AT AVCO IS FLOUNDERING

BUILDING A UNION LOCAL

by Mike Holodnak

The author works at Avco-Lycoming in Stratford.

The entire Local union in Avco is of course composed of people who are a product of the established society, that is, conditioned to respect a set of values that hold us in the control of special interests. So already, even before we begin, we have one strike against us. Yet, miraculously, the bulk of the rank and file, in its hunger for freedom, continues to retain enough of its intrinsic independance to be unruly, disrespectful and almost radical in its attitude toward this controlling authority. This is a positive attitude toward building a strong union. But the Local leadership, on the other hand, has somewhere along the line capitulated, fallen down on the job to become tricked by the company into policies that are apologetic, compromising and retreating, a negative attitude that continues to keep our union weak.

For example: The current course of moderation, charted by the Shop Committee, is alienating and frustrating the membership to no end. "We have to go easy on the company or it will move out," our union officials warn. And so, despite the fact that the company has a stupid, incompetant and irresponsible management that has arrogantly sabotaged the grievance procedure, the union members must continue to kiss the company's posterior for the privilege of living. But labor history clearly shows that being obedient and submissive will not alter the company's behavior one way or another. The company right now is answerable to no one, and when it decides to move out of an area it will do so regardless of how it effects people. In fact it will do so easier if we submit to it. But an aggressive union, one that stands up to the company and demands some equity in these decisions that affect us, will not only unite the membership, but can stop a move like that, as has been done in the 1930's by sitdown strikes that successfully stopped General Motors from its intended move out of an area. Of course the strategy in our case may not be identical, but a positive stand, on issues that concern our destiny, must be taken.

But unfortunately nearly the entire incumbent leadership is operating in a vacuum, devoid of empathy, totally isolated from the rank and file. To the more militant stewards the leadership says, "Sure the problem is hard on the members, but don't press the issue or Congress will make more laws against us, especially now that there is so much anti-union feeling in the country." Precisely the attitude that forster anti-union feeling. Or, "Compromise on grievances is necessary. We don't want to put the people's jobs in jeopardy." But now practically everyone's job is in jeopardy. Or, "Sure morally you're right, but..." That's right. We mustn't forget, the the company's sacred laws forbid morality. Or, "We've got to be responsible." Question is, to whom? And a growing resentment in the rank and file blossoms out the word "Sellout" with increased regularity.

Naturally, the incumbent officers who are honest, hardworking and sincere for the most part, retaliate against this resentment by growing increasingly more cynical of the people they are supposed to represent. They accuse the people of being selfish and fickle. And, in their claim that people do not make sanse, they often point to a few individuals who are so completely irrational that they're nowhere. This of course is true in the case of some individuals, but it certainly does not reflect people as a whole. People taken together do make sense. It matters not whether injustice is foisted on them legally or illegally, they instinctively rebel against it. Now, despite last May's endorsement of the incumbent administration for a second term, members are again growing dissatisfied. It took them a while to become dissatisfied because they were bending over backwards to give it a chance and because it took a while for it to become unmistakable and obvious that the Local was again floundering. Now the people are generally abusive and insulting to their officials, and there's no question that they will dismiss them in the next election, as has been done through most of this Local's history.

The Sunday monthly union meetings, even before the company began working the employees on Sunday overtime, have long been regarded by the members as a futile way of achieving effective policies in the plant. All the members keep doing is changing officers in the hope of some day stumbling upon some that will truly represent them. But so far, this has solved nothing.

Would it not be more practical for all of us to get to the core of the problem? Like what causes the rank and file to be so different from the leadership when they are both cut from the same cloth?

The process is, of course, complicated and subtle, but in simple form doesn't it go something like this?

Most union members resent being treated like kindergarten children by the company and, when an opportunity presents itself, do not hesitate to act individually or in a group against the company. And in a union confrontation with the company, such as an official strike, the unity and militancy is overwhelming. But only a tiny few seek leadership roles. And those that do may not always be moved by the purest of motives, although, for the most part, their intentions are good. Anyway, Avco, like all large corporations, has become sophisticated in its underhanded union busting tactics, which run the gamut from sweet talk, giving special privileges to company orientated candidates (such as allowing them to campaign on

EXHIBIT NO. 4

company time), using rats (stool pigeons), to making it miserable for and sometimes firing the really dedicated unionists, and last but not least, buying off whatever other effective opposition may be left with a foremanship. And so the few really good ones who may survive all that become an ineffective minority for getting really effective policy established. And, even if, after all the company's tricks, a majority of militant people is elected, the company brings its brain-washing technique into play to sway enough of them to throw the balance of power in the company's favor.

In other words, the main difference between the leadership and the rank and file is that the leadership has been directly exposed to the company's corrupting influence while the rank and file has not. It is a difference that is artificially induced by the company.

Yet, although the company concentrates most of its brain-washing efforts on the union leadership, it does not completely ignore the membership. It constantly bombards the membership with divide-and-conquer tactics, probing for weak spots, sowing distrust and playing one employee against another, fragmenting and scattering its militancy into a poison that hurts only the union. There is no doubt that the membership is as directionless and wrong in its approach as the leadership, but nobody can deny the fact that it is more militant toward the company than the leadership.

Instead of suppressing this militancy, as the leadership is presently trying to do, it should be channeling it into a positive direction. In short, the leadership should be exposing the company's maneuvering for what it is so that some day we will stop repeating the tragic mistakes of most of our past administrations.

It's probably true that wildcat strikes are not the answer, but wildcats wouldn't even be tempting if we had a good solid union that knows where it's at and that does not, through the grievance procedure, compromise away our rights. Yet it is comforting to have wildcats in our arsenal of weapons, just in case.

In any event, the company gets away with its devious and unfair labor practices because the company is above the law, (even the more naive realize this) and the biased judges and arbitrators, for all practical purposes, belong to the company. The most recent example was the firing of the twenty-two so-called "hard core of miscreants." From his Heavenly perch the "impartial" Arbitrator, backing up the company, pronounced his God-like opinion upon us poor sinful mortals while praising the pure-as-the-snow "patient company" to the high heavens.

Nevertheless, many of our union officials keep telling us to be "reasonable." But this is precisely what most of us have been for too many years, and it's been ridiculous. Imagine what further disasters would have befallen our country if the American people had consented to President Johnson's pleas of "Let us reason together." Even with a "heavy heart" it would have been preposterous.

Was George Washington reasonable when he challenged the established order of British domination? Was Galileo reasonable when he challenged the church's concept of the universe? Was Columbus reasonable when everyone, in his day, knew that the world was flat? And wasn't Jesus Christ even more unreasonable? The most reasonable thing for him would have been to say, "I don't want to get involved." It certainly would have saved him the hard time the establishment gave him on the cross. Still, he handed us some pretty good ground rules for moral behavior.

The point is that nothing has ever been accomplished by so-called "reasonable people." Actually it's unreasonable to tell us that we must be "reasonable" to all the official insanity that exists around us. The labor movement itself would have never been born if the workers had been "reasonable."

Still, though the labor movement has raised the status of workers from animals to sub-humans, the relations between the company and employees has not changed since then; the same peculiar setup still exists. Uncompromising struggle is what must continue – without letup – till every person in this country has the opportunity to become a full human being.

Only company unions, that is those which are set-up and controlled by the companies, can have harmonious relations. And any union official who believes that the union must get along with the company is simply deceiving and selling the union members down the river.

We must reject the past policies and directionless campaigns for union office which were comprised of one group slandering another, with each campaign giving the members, especially the new ones, the worst possible impression of unionism, while the company, snickering behind the scenes, came out of it all smelling like a rose.

Only when we see it like it is will we be able to do something about our many problems. Only when we demand states of candidates in general elections who have a policy and who run on a platform based on union principles will we begin to unite and move our union forward.

It's all up to us.

To The Editor:

The first of several bills which will affect the status of the ABM "thin" system called "Safeguard" has been going through committee hearings and is scheduled for a floor hearing in May. Rep. Giamo and Sen. Ribicoff have already expressed reservations about "Safeguard" and Senator Dodd is presently not commited either way. There will undoubtedly be the usual pressures on all three men to approve the necessary funds for "Safeguard." Voter intent should have more impact on these legislators regarding these bills than is usually the case. Letters to Giamo and Ribicoff expressing support for their present position and to Dodd encouraging him to vote against funds or authorization of "Safeguard" could have a significant effect on the outcome of the Administration's attempt to start an ABM system. *Readers are strongly urged to write and to advise friends to write Giamo, Dodd and Ribicoff today.*

Sincerely,

Jack Crane

REVISED [illegible]
LABOR RELATIONS

GENERAL PLANT CONDUCT RULES

IN ANY ENTERPRISE THERE MUST BE RULES AND REGULATIONS TO GOVERN THE ACTIVITIES OF THE PEOPLE INVOLVED IN ITS OPERATION.

The following rules and regulations have been developed for use at Lycoming Division so that we may work together in an orderly manner without encroaching on the rights and privileges of others.

The below listed rules constitute prohibited conduct. Offenses under these rules may be cause for suspension or discharge.

1. Unauthorized possession of cameras, firearms, or other weapons or explosives of any kind, on premises at any time.
2. Knowingly punching the card of another employee, or having one's time card punched by another.
3. Permitting another to use your badge, or using another person's badge, or alternate badge.
4. Tardiness or absenteeism without reasonable cause.
5. Contributing to unsanitary conditions or poor housekeeping.
6. Causing material or parts to be scrapped due to carelessness.
7. Mistakes due to carelessness.
8. Engaging in horseplay, running, scuffling, or throwing things.
9. Wasting time, loafing or loitering during working hours.
10. Smoking in non-smoking areas.
11. Failure to report for overtime work without good reason, after being scheduled to work.
12. Solicitation during working hours for any purpose or by or in behalf of any organization unless authorized by the Labor Relations Department. Selling or collecting contributions for any purpose unless authorized by the Labor Relations Department.
13. Distributing any written or printed matter, unless approved by management.
14. Posting or removal of any matter on bulletin boards on the premises, unless approved by management.
15. Removal from the premises of any Company or employee property without proper authorization.
16. Gambling, engaging in any game of chance, possessing gambling paraphernalia, participating in, or furthering any gambling activity or violating any of the provisions of Chapter 946 of the Connecticut General Statutes on Company premises at any time.
17. Misusing, destroying or damaging any Company property or the property of any employee.
18. Restricting production or interfering with others in the performance of their jobs, or engaging or participating in any interruption of work or production.
19. Making false, vicious or malicious statements concerning any employee or which affect the employee's relationship to his job, his supervisors, or the Company's products, property, reputation, or good will in the community.
20. Fighting, or provoking or instigating a fight, on Company premises, at any time.
21. Possession, or use, of alcoholic beverages or drugs on the premises, at any time.
22. Reporting for work under the influence of alcohol or drugs.
23. Violating a safety rule or safety practice or causing injury to another employee, or engaging in any conduct which tends to create a safety hazard.
24. Immoral conduct or indecency.
25. Interfering or refusing to cooperate with plant protection in the performance of their duties.
26. Sleeping during working hours.
27. Entry of the plant prior to the starting time of his shift by an employee or remaining on the premises for an unreasonable period of time beyond the end of his shift (excluding normal walking time, personal preparatory or closing activities); entry of the plant by an employee unless he is on duty or is scheduled to work or use by an employee of a plant entrance other than the one designated for his use.
28. Leaving plant or work area or job assignment without permission before final whistle indicating end of shift.
29. Insubordinate conduct or refusal to follow foreman's orders.
30. Neglect by an employee of his job duties or responsibilities or refusal by him to perform work assigned.
31. Falsifying personnel records or Company records. Making false claims or misrepresentations in an attempt to obtain sickness or accident insurance benefits or workmen's compensation.
32. Falsifying or refusing to give testimony when accidents are being investigated.
33. Operating, using or possessing machines, tools or equipment to which the employee has not been assigned; or performing other than assigned work without permission of foreman. Using or possessing another employee's tools without the employee's consent.
34. Abusive, immoral or obscene language to any employee or supervisor.
35. Threatening, intimidating, coercing or interfering with other employees or supervision at any time.
36. Sabotage - (meaning deliberate and/or intentional destruction or damage of any Company tools, equipment or products).
37. Frequent garnishments.
38. Failure to maintain production standards.
39. Doing personal work in the plant at any time.
40. Repeated failure to ring own clock card.
41. Harboring a communicable disease which may endanger other employees.
42. Offering or receiving money or other valuable consideration in exchange for a job, better working place, or any advantage in working conditions.
43. Constant and repeated breach of Company Rules and Regulations.
44. (This rule is presented in a separate supplement regulating the visits to the Plant by International Union Representatives and the Local Union President.)

Proper attention to duties and the use of good judgment by all employees will eliminate the need for disciplinary action under these rules.

This list of rules is not intended to be all inclusive and engaging in such other practices as may be inconsistent with the ordinary, reasonable, common sense rules of conduct necessary to the mutual welfare of the Company and its employees will also subject the individual to discipline.

AVCO LYCOMING DIVISION
STRATFORD, CONNECTICUT

PLAINTIFF'S EXHIBIT 5.

PLAINTIFF'S EXHIBIT 6.

FORM PRD-65 PM
REV. 7-65

AVCO LYCOMING DIVISION
STRATFORD, CONNECTICUT

GRIEVANCE FORM

9378 No. B 29062

NOTE: THIS IS FRONT SIDE OF FORM. COMPLETE ALL ITEMS ON THIS SIDE BEFORE REMOVING CARBONS. SEE NOTE BELOW.

FILE CODE: _____
LABOR RELATIONS USE ONLY

STEP I TO: Labor Relations DEPT: _____ TIME REC'D. 1100 DATE 5-29-69

GRIEVANT(S) NAME(S)	CLOCK NO.	LABOR GRADE	CLASSIFICATION	SENIORITY DATE	DEPT.
M. Holodnak	2838	5	Parts Insp. A	1-18-60	310

WHAT ACTION OF THE COMPANY RESULTED IN THIS GRIEVANCE? (INCLUDE NAMES, DATES, TIMES AND LOCATIONS) The Union & Mike Holodnak grieve that the Co. action on the date 5-28-69 on terminating him is improper, unfair and without just cause. The Union demands that the Co. reinstate the grievant immediately with full seniority and pay him all monies lost as a result of the Co. improper action.

WHY IS COMPANY'S ACTION CONSIDERED A VIOLATION OF THE LABOR AGREEMENT? _____

EMPLOYEE'S SIGNATURE Mike Holodnak STEWARD Frank Hunka

ANSWER OF COMPANY REPRESENTATIVE _____

SIGNATURE OF COMPANY REPRESENTATIVE: _____ DATE: _____

INSTRUCTIONS:
GRIEVANT WILL COMPLETE APPLICABLE PORTION. COMPANY AND UNION REPRESENTATIVES WILL OBSERVE TIME LIMITS.

NOTE: AFTER ALL ITEMS ON THIS SIDE ARE COMPLETED, PULL OUT CARBONS BELOW AND REVERSE FORM.

UNION COPY—NO 1

EXHIBIT NO. 6

NOTE: THIS IS REVERSE SIDE OF FORM. BE SURE CARBONS ARE REMOVED BEFORE FILLING IN ITEMS ON THIS SIDE.

9378

B29062

UNION DISPOSITION: Advance to next step

SIGNATURE OF STEWARD: _____ COMMITTEEMAN: [signature] DATE: 5/27/69

STEP II ANSWER OF COMPANY REPRESENTATIVE: The termination of employee was for just and sufficient cause. Grievance denied.

SIGNATURE OF COMPANY REPRESENTATIVE: [signature] DATE: 6/2/69

William Ashlaw / Labor Relations Supervisor/do

UNION DISPOSITION: Agenda

SIGNATURE OF STEWARD: _____ COMMITTEEMAN: [signature] DATE: 6/2/69

STEP III MANAGEMENT – UNION COMMITTEE MEETING DATE: _____

ANSWER OF COMPANY REPRESENTATIVE: As relates to the grievant, termination was for just and sufficient cause. The grievance is denied.

SIGNATURE OF COMPANY REPRESENTATIVE: Thomas R. Smarz DATE: 6/16/69

Thomas R. Smarz - Labor Relations Manager/WA/jk

UNION DISPOSITION: _____

SIGNATURE OF COMMITTEEMAN: [signature] DATE: 6/16/69

UNION SHOP CHAIRMAN: _____ DATE: _____

NOTE: THIS IS BACK OF FORM, USE OTHER SIDE FIRST.

PLAINTIFF'S EXHIBIT 8.

LABOR ARBITRATION

* * * * * * * * * * * * * * * * * * *

LOCAL 1010, UAW *

ARBITRATION NO. 9378

and *

GRIEVANCE NO. B-29062

AVCO LYCOMING DIVISION *
AVCO CORPORATION
STRATFORD, CONNECTICUT *

JULY 17, 1969

* * * * * * * * * * * * * * * * * * *

GRIEVANCE OF MICHAEL HOLODNAK

APPEARANCES:

FOR THE COMPANY:

NAPHIN, SULLIVAN AND BANTA
By: James Cox, Esq.

FOR THE UNION:

EDWARD G. BURSTEIN, ESQ.

POST REPORTING SERVICE
205 CHURCH ST., NEW HAVEN, CONN., 06510
624-4102

PLAINTIFF'S EXHIBIT 8

. . . Hearing in the Matter of Arbitration between Local 1010, UAW and Avco Lycoming Division, Avco Corporation, before Burton B. Turkus, Arbitrator, held at the Howard Johnson's Motor Lodge, Conference A, Honeyspot Road, Stratford, Connecticut, on Thursday, July 17, 1969 at 10:20 AM, at which time the parties were represented as follows:

FOR THE COMPANY:

James Cox, Counsel

John J. Arnold, Director, Industrial Relations

P. A. Cipriano, Assistant Director, Industrial Relations

William Ashlaw, Supervisor, Labor Relations

Bernard O'Neil, Coordinator, Industrial Relations

John Foster, Assistant to Director of Industrial Security

FOR THE UNION:

Edward G. Burstein, Counsel

Russell R. Booth, President, Local 1010

Joseph Ciuci, Vice-President

William Strout, Plant Chairman

Frank Gontarz, Recording Secretary

Joseph Mezick, Committeeman

Michael Holodnak, Grievant. . .

PLAINTIFF'S EXHIBIT 8

THE ARBITRATOR: This is Arbitration No. 9378, Grievance No. B-29062. The grievant is M. Holodnak. The Committeeman is Joseph Mezick. And the issue here is the termination of the grievant.

Do you want to put your grievance in evidence?

MR. BURSTEIN: Yes.

THE ARBITRATOR: Received in evidence as Union Exhibit 1, which is Grievance No. B-29062.

(The document referred to was received in evidence and marked Union Exhibit 1.)

THE ARBITRATOR: The contract is received as Joint Exhibit 1 and the Plant Conduct Rules as Joint Exhibit 2.

(The documents referred to were received in evidence and marked Joint Exhibits 1 and 2, respectively.)

MR. BURSTEIN: Mr. Arbitrator, before proceeding, I would like to ask Mr. Holodnak for the record, since I know he has consulted independent counsel, whether or not he is satisfied to have the Union counsel represent him.

MR. HOLODNAK: Yes, I am.

MR. BURSTEIN: And have you had an opportunity to discuss the case with me?

MR. HOLODNAK: Yes.

MR. BURSTEIN: Have you got a copy of the Plant

Conduct Rules?

THE ARBITRATOR: Yes.

MR. BURSTEIN: This grievance is Grievance No. B-29062, a termination.

The grievance reads: "The Union and Michael Holodnak grieve that the Company action on this date 5-28-69 on terminating him is improper,unfair and without just cause. The Union demands that the Company reinstate the grievant immediately with full seniority and pay him all monies lost as a result of the Company's improper action."

And on the reverse side the Union disposition was: "Advance to next step." Signature of the Committeeman: Mezick. Dated 5/28/69.

And in Step II, the answer of the Company representative was that: "The termination of employee was for just and sufficient cause. Grievance denied." Signed William Ashlaw, Labor Relations Supervisor. Dated 6/2/69.

The Step III answer of the Company representative was: "As relates to the grievant, termination was for just and sufficient cause. The grievance is denied." Signed Thomas R. Smarz, Labor Relations Manager. Dated 6/16/69.

And so here we are.

MR. COX: Mr. Arbitrator, at this time I would

PLAINTIFF'S EXHIBIT 8

suggest to the parties that we introduce as Joint Exhibits, the Plant Conduct Rules --.

THE ARBITRATOR: It will be received as Joint Exhibit 2 and the Collective Bargaining Agreement of the parties will be received in evidence as Joint Exhibit 1.

(The documents referred to were previously received in evidence and marked Joint Exhibits 1 and 2, respectively.)

MR. COX: And as Joint Exhibit 3 the newspaper article which is the subject of this meeting this morning.

MR. BURSTEIN: That's not a joint exhibit. You'll have to introduce that yourself.

Did we introduce the General Plant Conduct Rules?

THE ARBITRATOR: Yes.

MR. BURSTEIN: I would like to ask at this time which is the rule they claim the grievant violated.

THE ARBITRATOR: I don't know. As a matter of routine, the Collective Bargaining Agreement and the Plant Conduct Rules are received in evidence as Joint Exhibits 1 and 2, respectively. Now, whether or not it applies in this case, I do not know.

MR. BURSTEIN: I would just like to know which Plant Conduct Rules they're claiming he violated.

MR. COX: We'll develop that in our opening statement. As a matter of fact, it's 19.

MR. BURSTEIN: And no other?

MR. COX: No.

MR. BURSTEIN: Just 19, okay. May it be noted that we're only to defend as against a violation of the Rule 19.

THE ARBITRATOR: May we proceed?

MR. COX: Yes.

THE ARBITRATOR: I don't know whether or not you're familiar with my practice in connection with disciplinary actions, but when it is a termination, for the sake of expedition and to assure a full and fair hearing to a grievant, I have placed the burden directly upon the Company to establish the just cause and to open and proceed with the case.

MR. COX: All right, we shall then proceed. I will just make a brief statement that this grievance involves Plant Conduct Rule 19, which has been published in the notice introduced into evidence as Joint Exhibit 2, and also relevant portions of the Collective Bargaining Agreement.

This is not the type of discharge that sometimes makes it difficult for the Arbitrator and the advocates to get interested in the case. This is not a discharge of someone who stole a little bulb or a dollar's worth of nuts and bolts. This is a very significant case. In fact, in my experience it's one of the most interesting cases that I've been called upon to handle

PLAINTIFF'S EXHIBIT 8

or that I've reviewed.

It's a case involving the very heart of the collective bargaining relationship and the principles, the general principles of loyalty and insubordinacy. And as the case develops, I'm sure the Arbitrator will find too that this grievant was discharged for just cause, and that to set aside this grievance would be an act which would seriously weaken the collective bargaining relationship of the parties.

I'm ready to proceed at this time.

THE ARBITRATOR: Do you want to reserve your opening?

MR. BURSTEIN: No. I would like to make an opening statement now, which is unusual for me as you know.

Throughout all of these proceedings you, as the Arbitrator, are going to have to be extremely aware of the difference between insubordination, which my brother has alluded to, loyalties, collective bargaining agreements, and the greater concept which apparently not only our lower courts but even the Supreme Court of the United States has said may exist; that is to say, the right of free speech and its extension during the perhaps lamentable occurrences that have been transpiring throughout the United States.

I agree with Mr. Cox when he says that this is

interesting and unusual. I think what is going to transpire at this table can very conceivably have repercussions that will go through the labor circles and the court circles of the country. I think that this decision is one which will certainly be reported by every agency that does such reporting.

I think it's germane for you, Mr. Arbitrator, and for us on both sides, to consider whether or not, if this man attacked either the Union or the Company, he was attacking in derogation of the right of free speech, and whether or not the Labor Agreement as such and the so-called precepts of loyalty, both to the Company and/or the Union, are not put a step lower than the constitutional right of free speech.

I feel that this man, based upon the decisions of the courts of the last five years, and particularly the last year and a half to two years -- and I'm speaking of the Supreme Court -- certainly felt that if he did anything, he did it with the sponsorship or with the approbation of the most recent decisions, and that what he has done is no different than what has been done by others against not merely a Union or a Company or a corporation, but actually against the United States as such.

And, therefore, I say that this man should not be terminated because powers that be that far encompass and surpass his mental capacity have said that what he has done, he has the

right to do.

THE ARBITRATOR: Gentlemen, since you have both indicated that this is an unusual type of situation, possibly, for the sake of clarification, any colloquy that we may have on the following situation may be of aid to us in handling this problem.

General Plant Conduct Rule 19 reads as follows: "Making false, vicious or malicious statements concerning any employee or which affect the employee's relationship to his job, his supervisors, or the Company's products, property, reputation, or good will in the community."

This General Plant Conduct Rule has been in effect at least since January, 1961, and probably for many years more. Is there any contention here that General Plant Conduct Rule 19 is not a fair and reasonable rule, regulation and policy requirement; is there any such contention in the case?

MR. BURSTEIN: Let me just think for a moment. Well, I cannot agree with you in total --.

THE ARBITRATOR: I'm not asking you -- I asked you a question.

MR. BURSTEIN: What was the question again?

THE ARBITRATOR: The question is: Is there any contention here that the General Plant Conduct Rule 19 is an

PLAINTIFF'S EXHIBIT 8

unreasonable exercise of the Company's right to promulgate rules, regulations and policy requirements? I'm only asking if there is a contention. I didn't ask you to agree with me.

MR. BURSTEIN: I agree with you.

THE ARBITRATOR: What did you say -- there is no contention --.

MR. BURSTEIN: There is no contention that it is an unreasonable policy requirement.

MR. COX: I might say I've been advised it's been in effect since 1951.

THE ARBITRATOR: I said many years prior to '60.

Number two, is it contended in this proceeding by either side that the making of a false, vicious or malicious statement comes within the exercise of free speech when it affects the employee's relationship to his job, his supervisors, or the Company's products, property, reputation, or good will in the community?

MR. BURSTEIN: In reply to that, so long as the statement is proven to be false, vicious and malicious, I would say the Company has the right to have this rule in existence and has all the rights inherent thereunder.

THE ARBITRATOR: All right.

MR. COX: Are we ready to proceed then?

PLAINTIFF'S EXHIBIT 8
Holodnak - D

THE ARBITRATOR: Certainly.

MR. COX: All right. Our first witness will be the grievant. Will we swear in all the witnesses initially?

THE ARBITRATOR: No. I swear them as they take the stand.

MR. COX: All right.

MR. BURSTEIN: Just a moment.

MICHAEL HOLODNAK

called as a witness on behalf of the Company, being first duly sworn by the Arbitrator, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. COX:

Q State your name --.

MR. BURSTEIN: Just one moment. I would like to make a statement for the record. Prior to my client's or the Union's client taking the stand, I would like to ask that the rules of evidence be more strictly conducted than they usually are in the nature of arbitrations, and that I shall have the right of cross-examination as if he were a hostile witness, and also that he shall have the right to ask me, if he is asked any questions that he may think are incriminatory, he should have the right to ask me and I should have the right to tell him that this

question may be incriminatory under the Fifth Amendment; and he has the right to ask me if he doesn't want to answer the question.

THE ARBITRATOR: Let's take these seriatim.

You have a constitutional right to refuse to answer any question which in your opinion may tend to incriminate you. Do you understand what I mean by that?

THE WITNESS: Yes.

THE ARBITRATOR: To incriminate you in connection with any state, municipal or federal law or statute. Do you understand that?

THE WITNESS: Right.

THE ARBITRATOR: If you do, it will then be the function of the Arbitrator to pass upon the exercise of that right.

Secondly, you have the right to consult with counsel when a question is put to you by anybody in the case, including the Company's lawyer or anyone who asks any questions, you have the right to consult with counsel if you feel that the answer in any wise might violate your rights under the Fifth Amendment of the United States Constitution or of any equivalent Amendment of the State of Connecticut, or any other constitutional right for that matter.

Now, as to the third point that you raised, Mr. Burstein, I'll see to it that the rights of the grievant in all

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PLAINTIFF'S EXHIBIT 8
~~Holodnak - D~~ 13

respects, as you are properly seeking to do, will be preserved at all stages of this proceeding.

Secondly, I'll allow you a free and unlimited cross-examination of the witness even though the Company may take the position that this grievant is a hostile witness and they have a right to examine him as a cross-examiner.

MR. BURSTEIN: May I have just two minutes? I want to check the law in Connecticut on his testimony.

THE ARBITRATOR: Right.

(Short interruption.)

THE ARBITRATOR: If any question is put to you by anyone in this proceeding and you wish to consult your counsel for the Union in the case in advance of answering it, by all means indicate to me that you would like to consult counsel and I'll see that that right is accorded to you, and that all your rights, your constitutional rights, will be protected throughout the hearing.

MR. BURSTEIN: We are ready, Mr. Cox.

Q (By Mr. Cox) Did you give your name to the reporter, Mr. Holodnak?

A Michael Holodnak.

Q Now, Mr. Holodnak, prior to May 28, 1969, you were employed by the Avco Company in Bridgeport, Connecticut, is that

right?

A In Bridgeport?

Q Stratford, Connecticut.

A Yes.

Q And your date of service is a day in 1960?

A January 18, 1960.

Q Now, calling your attention to what the reporter has marked for identification as Company Exhibit No. 1, which purports to be a news article or a Xerox of a newspaper called the New Haven Journal-Courier--.

MR. BURSTEIN: Has that been put into evidence? That hasn't been put in evidence. You said it was an exhibit.

MR. COX: I'm asking a question and I'm asking the reporter to mark it.

MR. BURSTEIN: Mr. Arbitrator, has that been marked as an exhibit?

THE ARBITRATOR: It has not been received. He said that he has asked the reporter here to mark it for identification.

MR. BURSTEIN: Sorry, I didn't hear him.

MR. COX: I'm asking the reporter to mark for identification, as Company Exhibit 1, a newspaper publication entitled, "AIM - The American Independent Movement Newsletter, Vol. 4, No. 10, May 15, 1969," and which contains [illegible] page 14 --.

MR. BURSTEIN: Object to reading from the exhibit before it's introduced in evidence.

MR. COX: -- an article --.

THE ARBITRATOR: Let him finish his question and I'll rule on it. What are you trying to do here?

MR. COX: I'm reading the title of the article.

THE ARBITRATOR: Well, wait a minute. Apparently you have called this witness to ask him whether or not he wrote a letter which was published in this publication that you've referred to; isn't that the purpose of calling him, among other things?

MR. COX: That is right. It's more than a letter. It's an article in the newspaper.

THE ARBITRATOR: Well, why don't you ask him the questions and make the predicate for the receipt of the paper that you want to put in? Let's not do it in reverse.

Did you write a letter to some newspaper or magazine?

THE WITNESS: Well, I wrote the specific -- the specific letter I wrote, yes.

Q I am handing the witness what has been marked as Company Exhibit No. 1 for Identification --.

THE ARBITRATOR: It hasn't been marked. You have

asked the reporter to do it.

MR. COX: Right. I'm asking her to mark it as Company Exhibit No. 1 for Identification.

(The document referred to was received and marked Company Exhibit 1 for Identification.)

Q Now, I'm handing the witness what has been marked as Company Exhibit 1 for Identification, and in particular, page 14 of that exhibit. (Document handed to witness.) Mr. Holodnak --.

THE ARBITRATOR: Wait a minute. You handed it to him. Let him read it. Then you can ask him questions about it.

A Page 14, I have it here.

Q Can you identify for the record what is on page 14 and the page that follows?

A It's an article entitled, "Building a Union Local." And I wrote it.

THE ARBITRATOR: And when you wrote this article, did you send it to some magazine or other publication in order that it may be published and disseminated?

THE WITNESS: Well, I just published it -- someone read it and suggested they would like to publish it in a newsletter. I saw nothing wrong with the request and just gave it to him.

THE ARBITRATOR: Right. And you gave it to him for

publication in this newsletter or whatever this publication is called?

THE WITNESS: Right.

Q And it was published with your consent, is that right?

A That's correct.

Q And it was published accurately as you wrote it, is that correct?

A Well, word for word -- there's not a word in it that I hadn't written.

THE ARBITRATOR: Now, who published it?

THE WITNESS: The American Independent Movement.

THE ARBITRATOR: Let me look at the original. Is there an original? (Document handed to Arbitrator.) Does it have a New Haven Journal-Courier mast head on the article?

THE WITNESS: No. This happens to be --.

THE ARBITRATOR: Another article?

THE WITNESS: Another article. See, they mimeographed a group of different articles on this front page, and this is the headline that I think they're bringing out.

THE ARBITRATOR: I'm only asking questions.

THE WITNESS: I don't know just exactly what that page means myself.

THE ARBITRATOR: Well, the publishers to whom you

sent the article which you had written would be the American Independent Movement Newsletter?

THE WITNESS: Yes.

THE ARBITRATOR: And was your article published on May 15, 1969, under Volume 4, No. 10?

THE WITNESS: I think it was.

MR. BURSTEIN: I object to the answer. I would imagine the Company would have the original copy to bring in here.

MR. COX: Well, that is the original copy.

THE ARBITRATOR: This is the original. Is that your article word for word?

THE WITNESS: Yes.

THE ARBITRATOR: And what you have is a photostat of pages 14 and 15, is that correct?

THE WITNESS: That's correct.

THE ARBITRATOR: And as you indicated to the Company lawyer, this is word for word as you wrote it?

THE WITNESS: Yes.

MR. BURSTEIN: Just one question at this point. I would like to object on the ground we don't know whether it was published.

THE ARBITRATOR: I don't know what the "we" means.

MR. BURSTEIN: Nobody knows whether it was published.

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You asked him if it was published.

THE ARBITRATOR: Is this some indication to the witness that he is not to answer the question?

MR. BURSTEIN: No, not at all.

THE ARBITRATOR: After the article was published, did you see the publication in New Haven?

THE WITNESS: Yes, I did get a copy of it.

THE ARBITRATOR: Did the publishers send you a copy of it?

THE WITNESS: Yes.

THE ARBITRATOR: So that you know it was published. You have a copy of it in your possession?

THE WITNESS: Yes.

THE ARBITRATOR: All right. This is received as Company Exhibit 1 in evidence.

(The document referred to, previously marked Company Exhibit 1 for Identification, was received in evidence and marked Company Exhibit 1.)

MR. COX: You have no copy, Ed?

MR. BURSTEIN: No, I don't. (Document handed to Mr. Burstein.)

THE ARBITRATOR: Do you know, Mr. Holodnak, whether or not this article that you wrote was published in other

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publications in addition to the AIM?

THE WITNESS: To my knowledge, I have no knowledge of anything being published other than that.

THE ARBITRATOR: Right. Did you send copies to any of the local newspapers for publication in a letter column?

THE WITNESS: No, I did not, not pertaining to that article or anything.

THE ARBITRATOR: I see. All right.

Q (By Mr. Cox) Now, with respect to this newspaper in which this article is published, where is it located, Mr. Holodnak?

A New Haven.

Q New Haven?

A Right.

Q And tell us, if you know,where it is circulated.

A Well, I really don't know. I know it's circulated generally in the Third Congressional District because they ran a candidate for Congress two years in a row and he ran for Congress in the Third Congressional District. And many of the people who supported him have subscribed to the newsletter, from what I understand, although I have no knowledge as to who the people are or how many there are of them.

THE ARBITRATOR: Did the AIM contact you and ask

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you for permission to publish your article called, "Building a Union Local"?

THE WITNESS: Yes. They heard about the article and they said they would like to publish it. And I said, "Well, all right." And I gave it to them.

THE ARBITRATOR: Did they indicate to you how they had heard about it since you hadn't sent the article to any newspaper for publication before that; did they indicate how they knew you had written it?

THE WITNESS: Well, I don't know specifically how the knowledge got around but --.

THE ARBITRATOR: Well, when you first wrote the article, what did you do with it? And I'm talking about this article now that is part of the publication, Company Exhibit 1. What did you do with the article when you wrote it?

MR. BURSTEIN: (To Witness) Do you want to talk to me a moment?

THE ARBITRATOR: Let the record reflect that the witness has indicated he wants to talk with counsel. I will permit it.

(To Reporter) Will you note the length of time of the conference?

(Five-minute conference between Mr. Burstein and

the witness.)

THE WITNESS: Well, the question was how did AIM get to know of my article. It came about that when I originally wrote the thing, I showed it to a few of the people on the floor, rank and file employees, most of whom I used to represent when I was steward.

THE ARBITRATOR: You mean employees of Avco Lycoming, your employer?

THE WITNESS: Yes, right.

THE ARBITRATOR: Okay.

THE WITNESS: And just to show it to them because actually I wrote it out of many of the things they were saying to me during the four years I was steward plus the time I spent working right on the job with them. And all it is was I tried to reflect what it was that they were saying. Well, when I did that, I put it all on paper and I showed it to them.

THE ARBITRATOR: Right. Now, was it on a typewritten paper?

THE WITNESS: Just a typewritten paper, right. And I was surprised at their response to it. They all thought it was, well, they used adjectives like, "Well, you hit the nail on the head" or "It's true."

I'm not saying that I'm infallible, that everything

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I put on paper has got to be a hundred percent true and accurate, because I'm not -- no one is infallible -- but I just tried to reflect what they had all been saying. I have leaflets that have been written by other people who have said substantially the same thing. I can pick out any paragraph of my article and I can show you someone that had signed a leaflet making that identical statement in the sentence.

THE ARBITRATOR: Now, approximately how many employees did you show the typewritten article, "Building a Union Local," which is the subject of the publication, Company Exhibit 1, before you sent it in for publication?

THE WITNESS: Probably about a dozen.

THE ARBITRATOR: And they were all employees of Avco Lycoming?

THE WITNESS: Right.

THE ARBITRATOR: And as far as you know, still are?

THE WITNESS: Yes.

THE ARBITRATOR: And you received various comments from them?

THE WITNESS: Yes.

THE ARBITRATOR: So that do you attribute it to the fact that you had shown it to them that the publication AIM then got in touch with you and asked for your permission to publish

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it?

THE WITNESS: Well, it was not that they got in touch with me. I got in touch with them. See, when I got the response that possibly I ought to put it out as a leaflet, or have it published or get it widely circulated, well, I thought the easiest way would be to have a publication put it out.

THE ARBITRATOR: So that you got in touch with the editors or the publishers of this AIM publication in order that the article might be published and disseminated --

THE WITNESS:

THE ARBITRATOR: All right.

Q Now, are you a member of AIM?

A Well, I don't know -- there's no membership as such. I know that when Bob Cook came out to the cafeteria at Avco to speak, when he ran for Congress, I did support him as far as that went. Then he ran again the next year and I supported him again, because a lot of the things he was specifically talking about I agreed with him. Now, as to whether everything is to my agreement, I don't know. But I did agree with him quite a bit on many of the issues at that time.

And right now some of the things that he was talking about four years ago have become reality. I mean, specifically, he was opposed to the Vietnam war, and at that time

very few people ever thought of speaking out against it. Now the greater bulk of the American people are saying the same thing.

Q Now, with respect to the American Independent Party, one of their tenets is that corporatism, what they refer to as "corporatism," must be opposed, and they must be organizing against corporatism. Are you --.

MR. BURSTEIN: I object --.

THE ARBITRATOR: Just a minute before you object.

MR. COX: I didn't finish my question.

THE ARBITRATOR: I know, but I want to ask a question of you at this time because I don't want this to get beyond the scope of this inquiry.

MR. COX: I understand that.

THE ARBITRATOR: This man, as I understand it, has been discharged for a violation of the General Plant Conduct Rules of the Company, Rule 19.

MR. COX: That is correct.

THE ARBITRATOR: You did state in your opening: insubordination, but at least insofar as the violation of the Plant Conduct Rule is concerned, that Plant Conduct Rule says, "Making false, vicious or malicious statements concerning any employee or which affect the employee's relationship to his job, his supervisors, or the Company's products, property, reputation, or good will in the community." Now, this is not going to be

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allowed to degenerate into any kind of a hearing as to this man's political affiliations, if any, or the concepts of any political party that he may be interested in. The scope of this inquiry is did he commit anything which warranted just cause for this Company to discharge him.

MR. COX: That's right. And that's the purpose of my question. There are really three parts to the statements that he made that are prohibitory --.

MR. BURSTEIN: Oh, I object to that.

THE ARBITRATOR: Wait, this is argument.

MR. BURSTEIN: He can't argue now. He's testifying.

THE ARBITRATOR: Yes, he has to argue it now because I'm not going to permit any such question.

MR. BURSTEIN: All right.

THE ARBITRATOR: I'm not going to shut him off--.

MR. BURSTEIN: All right, okay.

MR. COX: The purpose of my question is to show the intent, which is a necessary element of Rule 19.

In order to show that a statement is vicious or malicious, you have to show the intent with which it is made, and these questions that I'm directing now are designed to show that intent.

THE ARBITRATOR: All right. If you're trying to

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elicit --.

MR. BURSTEIN: I object to the question. He hasn't testified he's a member of that party.

MR. COX: I didn't ask that question.

THE ARBITRATOR: I'm going to ask you to withdraw your question in that form and phrase the questions one at a time. I'll permit counsel to object to it and then I'll rule on it. Excuse me just a minute.

(Short interruption.)

MR. BURSTEIN: Mr. Cox, I would like it noted for the record I want to have a conference with my client.

MR. COX: Okay.

(One-minute conference between Mr. Burstein and the witness.)

MR. COX: Will you repeat my last question?

THE ARBITRATOR: I suggest you start afresh. Might I ask this, Mr. Holodnak: Did you have any help in preparing this article which is the Company Exhibit 1; did anyone help you in [illegible]

THE WITNESS: Nobody did.

THE ARBITRATOR: And that's your choice of the language?

THE WITNESS: Yes.

THE ARBITRATOR: Do you have a college education?

THE WITNESS: No.

THE ARBITRATOR: Are you a high school graduate?

THE WITNESS: No.

THE ARBITRATOR: Are you a public school graduate?

THE WITNESS: Well, I went to grammar school. I graduated from grammar school.

THE ARBITRATOR: You graduated from grammar school. That has been the limitation of your education?

THE WITNESS: No. I went to trade school for two years where I learned tool and die making.

THE ARBITRATOR: Right. Did you study English?

THE WITNESS: I did on my own, yes.

THE ARBITRATOR: What books did you read in your studies?

THE WITNESS: What books?

THE ARBITRATOR: Yes.

THE WITNESS: I think I read every classic that was published for. well, all the way from the Renaissance to all the way up to modern novels.

THE ARBITRATOR: Right. So that you've been self-educated?

THE WITNESS: Well, I did a lot of reading. I

don't know if that is -- well, I imagine that is a process of education, plus the fact that I've lived a great part of my life already and I've experienced a lot of things. So that's all education.

THE ARBITRATOR: Were there any corrections in spelling in your article?

THE WITNESS: The spelling corrections I usually make on my own. If I'm not sure of a word, I look it up in the dictionary. I usually like to send in a piece completed.

THE ARBITRATOR: All right.

Q (By Mr. Cox) Mr. Holodnak, you've written other articles, you indicated, through the years, is that correct?

A I've written many articles.

Q And some of them -- strike that. With respect to AIM, the American Independent Movement --.

THE ARBITRATOR: Do you know anything about AIM?

THE WITNESS: Well, only to the extent that when they ran the Congressman here in my district and I happened to support him in both elections.

THE ARBITRATOR: Is that the person you referred to as Mr. Cook in your testimony?

THE WITNESS: Bob Cook.

THE ARBITRATOR: How does he spell his name --

C-o-o-k?

THE WITNESS: Right.

THE ARBITRATOR: An "e" on the end or no "e"?

THE WITNESS: Pardon?

THE ARBITRATOR: Does he have an "e" on the end of his name?

THE WITNESS: No, just C-o-o-k.

THE ARBITRATOR: And was Mr. Cook supported by the AIM movement?

THE WITNESS: Yes, he was. He was supported by a lot of other groups throughout New Haven in the Third District.

THE ARBITRATOR: I see. Now, did your contact with his political campaign come about as a result of your connection with AIM?

THE WITNESS: No. It came about only in connection with the election. When the election took place, I was interested in it, and to that extent only. When the election was over, that was it -- the election was over.

THE ARBITRATOR: Well, did AIM support Mr. Cook in his desire to become a Congressman?

THE WITNESS: Oh, yes.

THE ARBITRATOR: And is that how you came in contact with him?

THE WITNESS: Well, that's true, that's the way I did.

Q Now, one of the tenets of AIM is that they're opposed to what they call "corporatism" in its present form. Do you know that to be true?

A I don't know what you mean by "corporatism."

Q Are you familiar with the campaign of Mr. Cook?

A Well, there are --.

MR. BURSTEIN: Yes or no? That's a yes or no question.

A (Continuing) Yes. Well, maybe not fully, but the bulk of his philosophy I did understand, yes.

Q Right. Do you know whether he advocates a radical change in the corporate system in this country?

A Well, as far as the corporate system, I don't think that was the campaign issue at the time. I mean, there were a lot of over-riding issues such as racism and the Vietnam war, and poverty, and deteriorated cities, and many other issues that are close to the people.

As far as the corporate system, I don't know how far he went into that, but I think they were more primarily interested in some of these more important priorities, the things that were really affecting people and causing all kinds of hardships,

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and things that he felt should be relieved before other things are attended to.

Q Well, have you read some of his articles that he published in the last year?

A His articles?

Q Concerning Avco.

A Oh, I've seen the leaflets they've put out, yes.

Q Did you read the entire publication in which your article appeared, Company Exhibit No. 1?

A Yes, I think I read the whole thing. I read through the thing, yes

Q On page 19 it states that "Concerning" -- and this is the editorial page, I believe -- "Concerning analysis, both groups" that is, AIM and MDS -- "agree that organizing must be done against corporatism and imperialism."

MR. BURSTEIN: I object to that.

THE ARBITRATOR: Let me have the exhibit. You haven't given me a copy of that exhibit. (Document handed to Arbitrator.) What page are you referring to?

MR. COX: That's the page I think you have in front of you.

THE ARBITRATOR: Well, you're referring to a page which is not the article which was written by Mr. Holodnak.

MR. COX: That's right. In the same publication, however.

MR. BURSTEIN: But my brother makes one mistake, which I must respectfully submit to the Arbitrator, in that he asks him whether he read an article that was published at the same time as his. He doesn't ask whether he read it in advance. He has to ask him whether he read the article in advance. Therefore, the question is completely irrelevant, and I object to it.

MR. COX: No, no. The question is designed to show, which is probably evident, that the AIM organization is opposed to corporatism in its present form, and I'm just inquiring to see whether Mr. Holodnak has the same philosophy.

THE ARBITRATOR: Well, you don't have to be referring obliquely to some reference in a magazine. You have a perfect right to put those questions to him directly --.

MR. COX: All right.

THE ARBITRATOR: -- and ask him about it.

Q Mr. Holodnak, do you believe that corporatism, as you know it in the Avco situation, should be changed?

MR. BURSTEIN: I object to that question. I don't know what corporatism is in the Avco situation.

THE ARBITRATOR: The question is does Mr. Holodnak know. That's what I'm interested in, what he knows.

A I don't know what my beliefs in this have to do with it. I don't know --.

THE ARBITRATOR: Well, that's what he's trying to find out, whether your beliefs about the subject influenced your article to any extent. That's what he's trying to find out.

THE WITNESS: Well, my article -- well, no, it had nothing to do whatsoever with whatever corporate thing he's talking about. My article was strictly limited to the basic problems that people who work for a living are facing.

Q Isn't it a fact, Mr. Holodnak, that you visited Cuba in 1960?

MR. BURSTEIN: Object to that. I was there in '58.

THE ARBITRATOR: What's the ground of the objection?

MR. BURSTEIN: It has absolutely no bearing, the fact that he went to Cuba. It's a fishing expedition: did he go to Cuba in 1960.

THE ARBITRATOR: The objection is overruled on that. Did you visit Cuba in 1960?

THE WITNESS: Yes.

Q Now, following that visit, did you write articles and have them published in the public press concerning your visit?

THE WITNESS: Can I answer that?

MR. BURSTEIN: Do you want a conference?

THE ARBITRATOR: Yes, you may have a conference.

(Two-minute conference between Mr. Burstein and the witness.)

MR. BURSTEIN: He can answer the question.

THE ARBITRATOR: Read it to him.

(Last question was read.)

A Yes.

Q And in those articles, did you not state your belief that the Castro system was misunderstood in this country and actually it was working well?

MR. BURSTEIN: Objection: irrelevant, immaterial. It has no basis in this case whatsoever.

THE ARBITRATOR: Does he link up the Castro regime with this article?

MR. COX: No. But the philosophy expressed in those articles is continued on through this article. He's written over the past eight years several articles, and they're all against the capitalistic system.

MR. BURSTEIN: Mr. Arbitrator --.

THE ARBITRATOR: Well, he has a perfect right to feel antagonistic toward the capitalistic system if that's his belief. What I'm concerned with is whether or not he violated Article 19--.

MR. COX: That's right.

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THE ARBITRATOR: -- Rule 19.

MR. COX: Well, one of the things I'm showing is the intent with which he wrote this article. And I think this is relevant to showing that intent.

MR. BURSTEIN: Mr. Cox, may I reply to that? Mr. Cox states on the one hand, he's going to ask him questions about corporatism. Now he asks him about capitalism and the Castro regime in 1960. Because a man was once arrested in New Haven for breaking and entry in 1960 doesn't mean he plans to break and enter all his life. It seems to me this is completely irrelevant.

THE ARBITRATOR: I don't know what the allusion is to a man being arrested in New Haven. There's nothing about that in his record.

MR. BURSTEIN: The fact that the man went to Cuba. He went to Cuba and wrote an article, so what? It has nothing to do with whether he violated this article -- this rule.

MR. COX: It has a lot to do with the purpose of this article.

THE ARBITRATOR: Let me phrase it this way: Is there any of the philosophy which you have in regard to capitalism which in any wise affected you in the writing of the article in question, "Building a Union Local"?

THE WITNESS: Well, I think I was focusing the problems, as I pointed out earlier, basic problems that working people face.

THE ARBITRATOR: That isn't the question that counsel is trying to elicit. He wants to know whether or not any of your philosophies, since your visit to Cuba, in any way affected you in the writing of this article.

THE WITNESS: In this article? Absolutely not. What has that got to do with this?

THE ARBITRATOR: All right. Continue.

Q (By Mr. Cox) Now, calling your attention to this article, could you pick it up and examine page 14? (Document handed to witness.) I'm going to call your attention to specific portions of it. Now, the first portion I'm calling your attention to is on page 14 in the second paragraph. It reads: "For example: The current course of moderation, charted by the Shop Committee, is alienating and frustrating the membership to no end. 'We have to go easy on the Company or it will move out,' our Union officials warn. And so" -- and this is the part I'm specifically going to ask you about -- "despite the fact that the Company has a stupid, incompetent and irresponsible management that has arrogantly sabotaged the grievance procedure, the union members must continue to kiss the company's posterior for the purpose" --.

A "Privilege."

Q Sorry -- "for the privilege of living." Now, with reference to this sentence, this series of sentences I've read, and specifically to the words, "stupid, incompetent and irresponsible," do you know this to be true?

A Yes, I do.

Q What knowledge do you have that the Company has a stupid management?

A Can I have that envelope there, please? (Envelope handed to witness.) Aside from the fact that most of the employees are repeating it daily, and the Company is exhibiting it daily by some of the tactics that some of the foremen are perpetrating with the knowledge of management; and also the fact that I've some leaflets that were written by different individuals who put it down in writing, this very same thing that you're quoting here, or almost words to that effect.

Q Did they give you these leaflets?

A These leaflets I collected over the years from Avco, as I go in and out of the plant.

THE ARBITRATOR: Who published these leaflets?

THE WITNESS: The Union.

Q And give me one example where the Company has been stupid.

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A Well, I can go into that and write a book on it. The thing right now is that here is a leaflet written -- and I quote just a paragraph, "Now they are attempting to use the bargaining unit employees as scapegoats for management's own incompetence and past indifference."

Q I'm asking you the question: What knowledge do you have personally that the Company has a stupid, incompetent and irresponsible management?

THE ARBITRATOR: He wants to consult with counsel.

(Two-minute conference between Mr. Burstein and the witness.)

THE ARBITRATOR: All right, he finished the conference.

Q Would you answer?

A The question was do I believe it?

Q No. The question is this --.

THE ARBITRATOR: Well, yes, that's the question. Do you believe that the Company has a stupid management?

THE WITNESS: Well, I believe it, yes.

Q What knowledge do you have as the basis for that belief?

A Well, I've been working there for nine and a half years and I've seen it through my own eyes. I've seen the tactics, all the various things that were used and done by foremen who, with the

complete knowledge of Labor Relations and the Company itself, are trying to get away with various types of things. And there were blunders that it turned out to be that they were doing. I mean, I'm talking about stupidity on the part of the foremen who were perpetrating these things.

THE ARBITRATOR: May I interrupt you for a moment? When you're speaking that the Company has a stupid, incompetent, irresponsible management, you're speaking beyond, are you not -- or am I incorrect -- beyond the foreman stage?

THE WITNESS: Yes.

THE ARBITRATOR: You're going right to the very top of the Company, aren't you, when you speak of management?

THE WITNESS: Well, that's true, because the foremen, they get their consent from the top. They get their instructions, and many times they get false instructions.

THE ARBITRATOR: All right. So that when you wrote in this article "that the company has a stupid, incompetent and irresponsible management," you meant precisely what you wrote, didn't you?

THE WITNESS: I certainly did mean it, otherwise I wouldn't have written it.

Q And the basis of your belief with respect to the top management is the actions of the lower management, that is, the

foremen, is that right?

A Well, I would have some contact with a little higher management. And though they're more sophisticated at the higher level, there is not much difference in their attitudes.

THE ARBITRATOR: Can you hold it just a minute?

(Short interruption.)

Q Now, Mr. Holodnak, can yougive me one example of the Company management's incompetent action?

A In Avco, one example?

Q Right.

A Well, you know, it's hard to be able to pick something out.

MR. BURSTEIN: Well, "stupidity" is a subjective thing. What may be stupid to one may not be stupid to another.

THE ARBITRATOR: Well, the witness is an intelligent individual.

A (Continuing) Well, let me just pick one out at random. I just happen to have these in front of me. Well, here's one here, "Next" --.

THE ARBITRATOR: He's reading something. Is this some article that somebody else wrote?

THE WITNESS: Well, this is a leaflet that someone wrote, yes. But it's an example -- if you try to pick out an

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example of a million examples, sometimes it's hard to do. "Next" --.

THE ARBITRATOR: Don't read from the article yet. What I'm trying to find out here, in line with the Company's questions to you, is: Did you formulate the opinion and conclusion "that the company has a stupid, incompetent and irresponsible management" from some leaflets that you have read?

THE WITNESS: No. From firsthand experience.

THE ARBITRATOR: From firsthand experience. Now, what counsel is trying to find out: What firsthand experiences did you have which would indicate to you or indicate to any reasonable person that the Company does have "a stupid, incompetent and irresponsible management"?

THE WITNESS: Well, one example would be the way management decided to arbitrarily set the quitting time of employees, creating a traffic jam at one time which created a lot of confusion. But let me see --.

THE ARBITRATOR: Well, isn't it a contractual right of the Company to set the starting and quitting time under the contract?

THE WITNESS: Well, this turned out to be quite a monstrous traffic jam.

THE ARBITRATOR: All right. When did this happen?

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THE WITNESS: Oh, about a couple of years back.

THE ARBITRATOR: All right. Now, what other first-hand experiences did you have --.

THE WITNESS: I wasn't prepared in bringing up these things. But most of the ones I'm familiar with on the foremen are just general foremen level. And as far as the rest of it goes, it's all just a matter of the foremen and general foremen being sustained very often in their positions which were far from being correct and, in fact, were outright stupid and incompetent, to begin with.

Q Now, do you have any other -- you wrote this article originally shortly before it was published in May of 1969, is that right?

A Yes.

Q And you wrote it probably in April?

A I don't know what day I wrote it. But I had it sitting around a while. Maybe more than a month.

Q Three months?

A It's possible. I don't know.

Q Are there any examples you can give us that you had in your mind at the time you wrote this article that occurred contemporaneously or about the same time you wrote the article?

THE ARBITRATOR: Of which you had firsthand

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knowledge.

A What do you mean that had happened?

Q Examples of stupid, incompetent and irresponsible examples of Company management.

A I can't think of anything right at the moment.

Q Now, with respect to this next phrase, "arrogantly sabotaged the grievance procedure," can you give us an example of that?

THE ARBITRATOR: Firsthand knowledge.

A Well, firsthand knowledge was that as a steward I had submitted grievances, and many grievances were more than two years in the process and still without any resolution to them.

THE ARBITRATOR: When were you a steward, Mr. Holodnak?

THE WITNESS: I was a steward for four years.

THE ARBITRATOR: From when to when?

THE WITNESS: From 1965 -- about 1965 to '68.

THE ARBITRATOR: And were you elected by the membership as a steward?

THE WITNESS: Yes.

THE ARBITRATOR: And when in '68 did your stewardship as a Union steward terminate?

THE WITNESS: Well, I resigned because of bad

health. I was elected --.

THE ARBITRATOR: Approximately when?

THE WITNESS: I was elected to my second term.

THE ARBITRATOR: Approximately when was that that you resigned?

THE WITNESS: May of 1968.

Q Now, isn't it a fact that from May of 1968 until October 30, 1968, you were not employed by the Company in active service, you were on leave of absence for illness?

A I was on medical leave during that time.

Q Right.

THE ARBITRATOR: What were those dates?

THE REPORTER: From May of 1968 until October 30, 1968.

Q Now, with respect to the delay in the processing of grievances to which you referred, is this the basis of your belief that the Company has arrogantly sabotaged the grievance procedure?

A This is my belief, that's true.

THE ARBITRATOR: And that was the basis of your statement in the article, your belief?

THE WITNESS: Yes.

Q Now, the next clause refers to "the union members must

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continue to kiss the company's posterior for the privilege of living." What is the basis of your belief for that?

A Well, the basis of that belief is that we have to come to work and we all have to earn a living, but the thing is, under the condition that prevailed where you can't get justice when it's required and you have a long process,the grievance procedure has become bogged down to the point where it takes so long to get a grievance resolved that people get discouraged in putting grievances in. And many people begin to accept many of these abuses as part of the working conditions. It's a steady declining process where the working conditions at Avco have become bad in respect that people are easily intimidated and frightened by the foremen or bullies who happen to be over them at the time, and there are many of those in the department.

THE ARBITRATOR: Well, Mr. Holodnak, between, for example, May of 1968 and the time you wrote your article, what connection or familiarity did you have with the grievance procedure and arbitration procedure?

THE WITNESS: Well, many times I would be approached by one of the grievants, of a person who I had written a grievance for as far as two and a half years back, inquiring about the answer. Well, I would go to the steward, the current steward, to inquire whether or not the answer was forthcoming or not. But

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people keep approaching me for answers that should have been resolved many years ago, and they still keep cropping up because there's no answer.

THE ARBITRATOR: For example -- let's take individual cases -- for example, if any individual was disciplined either by way of suspension or discharge, have you any idea how quickly that case was heard?

THE WITNESS: Immediately.

THE ARBITRATOR: So that you're not referring to any disciplinary cases?

THE WITNESS: No. I'm referring to cases where something has been done unjustly against employees, and they just don't get any satisfaction or redress. There is no way to get it resolved, except through a lengthy process. And sometimes the problem that was there and very pressing, by the time it does come up is not even there any more.

THE ARBITRATOR: Well, for example, do you have any idea, as a steward, how many grievances are filed annually in this large plant?

THE WITNESS: Well, I do know there's quite a number of them, there's no question about it.

THE ARBITRATOR: Right. And during your tenure of office as Union shop steward, there was a procedure whereby cases

were heard through the agency known as the American Arbitration Association, do you recall that?

THE WITNESS: Yes.

THE ARBITRATOR: Where independent arbitrators were selected by the parties to hear individual grievances, is that correct?

THE WITNESS: Yes.

THE ARBITRATOR: Well, did you find that there was a difference since there has been an impartial chairman or impartial arbitrator appointed, did you find any difference in the expedition in which grievances were heard?

THE WITNESS: I don't think the problem of the log jam is at the top. The thing in the first and second steps is completely disregarded by management. I don't know whether they gave the foremen the word to do this or what. But during the first two years that I was steward, we did have many resolutions to grievances in the first and second step. Then it became just a matter of course for foremen and general foremen to just ignore any statement -- I mean, any kind of a grievance whatsoever -- and just put their standard pat answers down, "Grievance denied, period," and then nothing was resolved. And everything was piled up in the third step and to the arbitrator and you had a log jam. The point is if we had a proper grievance procedure, we wouldn't

have maybe one-tenth of the grievances in the third step and then finally to the Arbitrator. But because it doesn't function at the lower level, the grievance procedure is shot.

THE ARBITRATOR: Well, don't you know, or didn't you know when you wrote the article that in addition to the various steps in the grievance procedure, there were periodic meetings by the committeemen of the Union with management officials in which many grievances were settled and resolved?

THE WITNESS: Oh, yes. I know they were doing a wonderful job. They were all working on it. But the point I was trying to make here is there was no reason for them to be overworked and overloaded if it was processed properly at the lower level. The first and second steps should be involved in this grievance procedure. They're part of our contract. But management saw fit to eliminate it. Whether by accident or design, I don't know, but it seemed like, well, whenever it was approached, it was there, it was done, that's the way it operates.

Q Now, your purpose in writing this article, Mr. Holodnak, was it to induce action, to get things changed and improved from your standpoint?

A Definitely to improve. I didn't write it to tear the Union down. That was not my intent. Whether I failed at it or whether I made errors in it or not, I don't know. But my intent

was to create a situation where people would try to find solutions to these problems.

Q It wasn't just a historical document, reciting what conditions were, is that right?

A Well, I don't know what you mean by "historical document."

Q In any event, you wrote it to induce people to make changes that you thought would be helpful to industrial relations at Avco?

A Well, I thought it would be helpful because a lot of people have encouraged me to do it. Well, I tried to reflect what they were saying. And when I did write it down, the majority of them who saw it and looked at it thought it was accurate in what was happening.

Q A certain group of employees look to you as their leader and their spokesman?

A No, I wouldn't say that. I'm just another employee like anybody else. I have as much say-so as anybody else in the local.

Q But you testified earlier that employees, even while you were on sick leave, came to you with respect to their grievances and their problems at the plant.

A Well, some of them did call me when I was out on sick leave questioning me about some of the problems they had, but most

of it was when I came back from sick leave. They approached me when they saw me and would inquire about their specific grievance. And I in turn would go and talk to the steward who happened to be steward at the time, and get the answer for them. Or at least I would tell them just what the grievance was.

THE ARBITRATOR: Well, there was nothing to prohibit these employees from consulting their own stewards and committeemen or even the Union President, isn't that correct, about a grievance?

THE WITNESS: Well, they usually approached the steward that wrote the grievance.

THE ARBITRATOR: Right.

THE WITNESS: I mean, the tendency would be if you're working near a guy and he sees you and he knows you wrote the grievance for him, he would naturally ask you.

THE ARBITRATOR: Oh, were these grievances that you had written originally that they came to discuss with you --.

THE WITNESS: Yes.

THE ARBITRATOR: -- or other grievances as well?

THE WITNESS: Well, sometimes it was just general problems throughout the plant. But many of them would just come to me to inquire about old grievances that I had written.

MR. BURSTEIN: You say old grievances that you had

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written?

THE WITNESS: Well, grievances not resolved yet, that were still outstanding.

THE ARBITRATOR: But not necessarily ones in which you had been the shop steward?

THE WITNESS: Yes, the ones that I was shop steward, most of them.

THE ARBITRATOR: Only those or mostly?

THE WITNESS: Most of them were. As far as grievances, they would approach me on those that I'd written.

THE ARBITRATOR: I see.

THE WITNESS: But it was just discussion over general problems, you know. Well, you know, everybody has those.

THE ARBITRATOR: You indicated to counsel for the Company that you took an interest just as an employee. Do you know any other employees who have written articles for publication in connection with Avco Lycoming?

THE WITNESS: Well, to my knowledge, I don't.

THE ARBITRATOR: Okay.

Q Now, did you know that in August, 1967, the arbitration procedure at your plant was changed to provide for a permanent umpire, do you know that? Did you know that there was a change at that time?

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A Yes.

Q And did you know the purpose of that change?

A Well, to expedite the grievance procedure.

Q Now, calling your attention to, again, the second paragraph on page 14 of your article, about midway through the paragraph it reads as follows: "The company right now is answerable to no one, and when it decides to move out of an area it will do so regardless of how it affects people. In fact, it will do so easier if we submit to it. But an aggressive union, one that stands up to the company and demands some equity in these decisions that affect us, will not only unite the membership, but can stop a move like that, as has been done in the 1930's by sitdown strikes that successfully stopped General Motors from its intended move out of an area." Do you know --.

MR. BURSTEIN: I object to that. There is no question yet. I think he's reading out of context. I think he should read the rest of the statement.

MR. COX: Oh, I'm sorry.

Q "Of course the strategy in our case may not be identical, but a positive stand, on issues that concern our destiny,must be taken."

THE ARBITRATOR: Well, were you in that article suggesting or advocating or in any way intimating that there

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should be sitdown strikes at Avco Lycoming?

THE WITNESS: No. I don't think I said that. I just pointed out that there were similar problems faced by labor, not only in Detroit, but in General Motors they intended to move out and the workers, who have as much interest in the problem as the company has, made their point made.

THE ARBITRATOR: I can understand precisely what you're saying, that from that standpoint, the employees and the Union had a right to be concerned with the destiny of the plant as to whether or not it remained in business or not. I can understand that. But in pointing that up, what was the necessity of referring to a method of a sitdown strike which, I assume, was a strike during the course of the pendency of the labor agreement and during its duration?

THE WITNESS: Well, this is the way these problems were resolved in those days. But this is not necessarily the way they have to be resolved today.

THE ARBITRATOR: Right. Then why then did you make an allusion to an improper method of settling the problem, namely, by taking job action during the pendency of the contract; why did you suggest that in the article?

THE WITNESS: Because that's the way it was done.

THE ARBITRATOR: Then you were merely doing it as

a reporter of the situation?

THE WITNESS: I reported that the problem was resolved in that way. Now, how we resolve it here --.

THE ARBITRATOR: So is it your statement that you merely did that to report the method used, not that you were suggesting or intimating that that ought to be continued as a method here at Avco?

THE WITNESS: That's right.

THE ARBITRATOR: Okay, all right.

Q Now, with reference to that same subject, calling your attention to the last paragraph in the first column on page 15, you state: "It's probably true that wildcat strikes are not the answer, but wildcats wouldn't even be tempting if we had a good solid union that knows where it's at and that does not,through the grievance procedure, compromise away our rights. Yet it is comforting to have wildcats in our arsenal of weapons, just in case." Did you believe that, at the time you wrote the article, to be true?

A Well, at that time there were a lot of questions up in the air about wildcats and the rights that people, as individuals, had, as far as expressing themselves independently of the organization that they happened to belong to at the time. Now, I don't really know the answer, as far as constitutionally, whether

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individuals have that right or not. I believed at that time, though, that they did have it. But I think --.

THE ARBITRATOR: Where is that quotation?

MR. COX: It's at the bottom of the first column on page 15.

A (Continuing) Maybe I may not be right.

MR. COX: May I have the last part of that answer?

(Last answer was read.)

THE ARBITRATOR: Precisely what did you mean for the reader of these articles to understand when you said, "Yet it is comforting to have wildcats in our arsenal of weapons, just in case"?

THE WITNESS: Well, at that time, I say, when I was up in the air about the legality of wildcats and peoples' individual rights, whether they should be allowed to do it, I wasn't sure about it. I thought that they had that right constitutionally. But I didn't advocate it because I never was for wildcats because they attempt to deny the membership because they're all original problems and not many people are aware of what the problems are, and it causes a lot of dissension among --.

THE ARBITRATOR: Well, didn't you know, as a steward, that there's a no-strike, no-lockout provision in the contract?

THE WITNESS: Yes, I did.

THE ARBITRATOR: All right. Didn't you know, as a Union steward, that in the event that any employee under your aegis were even discussing the possibility of engaging in a work stoppage in violation of the contract that it was your duty to dissuade them from doing so;didn't you know that was your obligation?

THE WITNESS: Yes, that's true.

THE ARBITRATOR: Right. And that had been pointed out to you in an arbitration award back in the late '60's --.

THE WITNESS: Right.

THE ARBITRATOR: -- late 1966-'67, correct?

THE WITNESS: Right.

THE ARBITRATOR: And didn't you know it was your obligation, as a shop steward, that in the event a wildcat stoppage did ensue, it was incumbent upon you to use every effort under your command to bring the employees back to work, indeed to lead them back to work; didn't you know that was your obligation?

THE WITNESS: Yes.

THE ARBITRATOR: Right. Now, in the light of that knowledge, I would like to know what you intended the readers of your article to understand by your concluding sentence, "Yet it is comforting to have wildcats in our arsenal of weapons, just

in case." Just in case of what?

THE WITNESS: Well, in case the grievance procedure is completely broken down.

THE ARBITRATOR: But you didn't say "just in case the grievance procedure is broken down."

THE WITNESS: Well, just in case -- what other reason would I say "just in case"?

THE ARBITRATOR: That's what I want to know.

THE WITNESS: Well, just in case you have no out, no way to resolve your problem, you've got to do something.

THE ARBITRATOR: But the contract did provide a way to settle grievances --.

THE WITNESS: That's true, I agree.

THE ARBITRATOR: -- didn't it? It provided steps in the grievance machinery and it provided for arbitration.

THE WITNESS: Right. That's why I was opposed to wildcats. We shouldn't have to resort to wildcats.

THE ARBITRATOR: And isn't it a fact that under the permanent arbitrator, cases were heard with greater expedition, that the backlog or jam of grievances was broken into considerably; isn't that the fact -- that the backlog or jam of pending grievances was reduced considerably under the new system of having a permanent arbitrator?

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THE WITNESS: Oh, well, that's possible, although I haven't seen it affecting the plant itself. It's possible that the volume may be going down.

THE ARBITRATOR: Well, when you were originally shop steward, it took a considerable period of time to hear a discharge or a disciplinary case, for example, isn't that right?

THE WITNESS: No. At that time --.

THE ARBITRATOR: Under the business of selecting arbitrators?

THE WITNESS: Oh, yes.

THE ARBITRATOR: Now, since the permanent arbitrator came in, you could hear a discharge case within 24 hours, couldn't you?

THE WITNESS: Yes.

THE ARBITRATOR: And that has happened, isn't that so?

THE WITNESS: Right.

THE ARBITRATOR: So what I'm concerned with is what were you trying to signal to the reader or to draw from your statement, "Yet it is comforting to have wildcats in our arsenal of weapons, just in case"?

THE WITNESS: Well, as I say, at that time I believed that individuals had that alternative when all other

alternatives were shut off.

THE ARBITRATOR: I see.

THE WITNESS: Now, there's been a little more emphasis on this point, and I'm not too sure about the legality of it any more. See, I thought at that time that there was a constitutional right, that individuals as such have that right --.

THE ARBITRATOR: I see.

THE WITNESS: -- but I may be wrong. So this is one of the reasons that I said that I didn't feel that I'm infallible when I wrote that article.

THE ARBITRATOR: All right.

Q Now, you're aware that wildcat strikes have been, or had been, at least through 1968, a frequent occurrence at this Company, is that right?

A Yes.

MR. BURSTEIN: That's not a true statement -- I don't think he means it to be untrue -- but since 1967 or '68, since you came in as the permanent Arbitrator, Mr. Arbitrator.

Q You know that in 1968 there were two wildcat strikes at your plant?

A '68?

Q Yes.

A There probably were, yes.

Q Well, do you know that the Arbitrator issued a cease and desist order in June of 1968 with respect to wildcat strikes and the encouraging of violations of the no-strike clause?

A Well, I did later on.

Q You knew that?

A I didn't get it immediately because I think there wasn't an issue until many months later.

THE ARBITRATOR: But you knew about it when you wrote the article?

THE WITNESS: Yes, I did.

MR. COX: Mr. Arbitrator, I would like to introduce into evidence for the record the order in the arbitration case which relates to the finding that there had been a violation of the no-strike clause in 1967, the decree of 1968, and the court order confirming the award, dated December 10, 1968.

MR. BURSTEIN: For what purpose is this being introduced?

THE ARBITRATOR: Well, he has already indicated he knew of the situation when he wrote his article.

MR. COX: Just so the record will reflect --.

MR. BURSTEIN: For what purpose are you introducing this?

MR. COX: Just to make the record complete with

respect to the Arbitrator's ruling to which the witness has testified he had knowledge.

MR. BURSTEIN: For that purpose only, okay.

THE ARBITRATOR: All right. Received as Company Exhibit 2 in evidence.

(The document referred to was received in evidence and marked Company Exhibit 2.)

Q Now, back on page 14, the middle column, about the middle of the first paragraph there, it states -- and I say for the record that I'm starting in the middle -- "Precisely the attitude that forster (sic) anti-union feeling. Or, 'Compromise on grievances is necessary. We don't want to put the people's jobs in jeopardy.' But now practically everyone's job is in jeopardy." This is the point I'm particularly going to ask you about: "Or, 'Sure morally you're right, but...'." And then you wrote this: "That's right. We mustn't forget, the Company's sacred laws forbid morality."

THE ARBITRATOR: Where are you reading from?

MR. COX: The first paragraph -- actually, the third paragraph of the article. It's in the middle column on 14.

MR. BURSTEIN: It's on page 14, Burt, right in the middle.

THE ARBITRATOR: Would you point out to me where

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he was reading from?

MR. BURSTEIN: Right here, see (indicating).

THE ARBITRATOR: Okay.

Q Now, with respect to your statement that "the Company's sacred laws forbid morality," what is the basis of your belief?

A Well, because many of the decisions that are made are not made on whether they're right or wrong, but what the Company can do.

Q All right. Now, calling your attention to page 15, there is a paragraph in the middle column and it starts out: "Nevertheless, many of our union officials keep telling us to be 'reasonable'." And you go on in that paragraph, andin the next two paragraphs, to indicate that being reasonable is not the right course.

Then you say again, though, in the second to the last paragraph in the middle column of that page: "The point is that nothing has ever been accomplished by so-called 'reasonable people.' Actually it's unreasonable to tell us that we must be 'reasonable' to all the official insanity that exists around us. The labor movement itself would have never been born if the workers had been 'reasonable'."

THE ARBITRATOR: What were you signaling to your readers there to infer from that?

THE WITNESS: Well, you notice the words "unreasonable" I have in quotes, to indicate that people are using --.

THE ARBITRATOR: No. You used the word "reasonable" in quotes -- not "unreasonable" -- oh, yes, "unreasonable" people.

THE WITNESS: Oh, to be reasonable, that's right. "Reasonable" is that a lot of people have been using the word, or misusing it is what they've been doing mostly. They've been applying "reasonable" to almost any kind of act that people have been engaged in.

THE ARBITRATOR: Well, is it unreasonable for the Union officials, who are charged with maintaining the integrity of the Labor Agreement, to urge upon its membership that they should not indulge in wildcat strikes; is that unreasonable?

THE WITNESS: That's not referring to anything with wildcat strikes.

THE ARBITRATOR: Well, what is it that the Union officials urged upon the membership to act reasonably that you find fault with in your article?

THE WITNESS: That the Union leadership should be more aggressive in its demands in its grievance procedure, rather than some of them that have taken the position that there are certain individuals who will go along -- there are certain individuals who will go along and think it's more reasonable to go

along with the tide regardless of how it affects the people that they represent.

THE ARBITRATOR: But, Mr. Holodnak, how many arbitration proceedings have you attended?

THE WITNESS: Arbitration proceedings?

THE ARBITRATOR: Yes.

THE WITNESS: None.

THE ARBITRATOR: Well, do you think it is fair to say in an article for your readers to understand and to be guided by that the Union is not aggressive in the handling of its grievances on the basis of not even having attended an arbitration hearing?

THE WITNESS: Well, I'm not talking about the arbitration aspect of it.

THE ARBITRATOR: Well, what are you trying to tell your readers about the Union not being aggressive enough, in what area?

THE WITNESS: Well, the grievance procedure primarily, because that's where all our problems are bogged down in, and everybody in the plant is the one that's feeling this. They're feeling these problems because they're not being resolved. All right, they may be resolved at the top portion of it, like the part that's sticking out and the rest of it is iceberg that still

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has to be resolved yet. But employees haven't felt the breakthrough yet.

THE ARBITRATOR: But what are you trying to tell your readers that the Union officials were not aggressive enough when they urged that people be reasonable? What do you say that their fault was, or what are you trying to tell your readers that the fault of the Union officials was in that?

THE WITNESS: Well, the ones I was referring to was the ones I was familiar with firsthand, who were telling me this thing firsthand, and were telling me, "Don't file a grievance for this" because for one reason or another, an excuse, just not to get too many grievances in. Or "Go easy here because things are bad enough as it is." Advice like that. Now, that's the kind of advice I was getting.

THE ARBITRATOR: Well, you certainly didn't get that kind of advice from the President or any of the high officers of the Union.

THE WITNESS: No. I didn't accuse the President of anything like that. I just am saying that I -- I didn't say that the majority of the officers were that way either. There were a lot of them, and there were enough of them to create quite a problem, at least in my area, as far as I was concerned.

THE ARBITRATOR: Well, it was the general tenor

and purport of the article to indicate that the Union officials of this Union were supine and were not doing the job that they were supposed to do. Isn't that the whole purport of your article?

THE WITNESS: Well, at that time I thought that was true, that they weren't quite doing the job.

THE ARBITRATOR: But now you know differently, don't you?

THE WITNESS: Well, I guess they're doing the job to the best of their ability.

THE ARBITRATOR: All right.

Q Now, you're a man of conviction, you say what you believe, is that right?

A Yes.

Q And you were in the grievance hearing or in the hearing that was held preliminary to your discharge. Were you present at that hearing?

A Preliminary?

Q Was there a discharge hearing? -- I guess it's called in this plant. Were you present?

A On the day I was terminated?

Q Yes.

A Yes, I was at the terminatinnhearing.

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THE ARBITRATOR: Before we get to that, may I speak with you about this, Mr. Holodnak? On page 15, the third column on page 15, the first full paragraph reads as follows: "Only company unions, that is those which are set-up and controlled by the companies, can have harmonious relations. And any union official who believes that the union must get along with the company is simply deceiving and selling the union members down the river.

"We must reject the past policies and directionless campaigns for union office which were comprised of one group slandering another," et cetera.

Now, what precisely were you trying to say to your reader about "Only company unions, that is those which are set-up and controlled by the companies, can have harmonious relations. And any union official who believes that the union must get along with the company is simply deceiving and selling the union members down the river"? Were you referring to the Union at Avco here, Local 1010?

THE WITNESS: Well, in this paragraph, it's a general statement, unions in general. If you have an independent union, of course you have no controversy, you have no grievance procedure, you have complete harmony. The Company has complete control over employees and the employees have no say-so in their

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working conditions.

THE ARBITRATOR: Right.

THE WITNESS: Now, you have a Union. Now, naturally a union is supposed to represent the membership, and the Company has its own interests and they're in conflict. Now, anybody who thinks they're not in conflict is deceiving themselves, aren't they?

THE ARBITRATOR: Well, don't you know, as a fact, when you wrote this article, that you have here a very militant and zealous union that seeks the protection of the rights of its membership and seeks to endorse all Company obligations under the contract? Didn't you know that when you wrote the article?

THE WITNESS: Well, I didn't say that they didn't enforce it. I'm pointing out the shortcoming here. I know there are some good things they do, a lot of good things.

THE ARBITRATOR: Well, certainly when you wrote the article, you knew that there was no shortcoming, that this was not a supine Union that sat by and allowed the Company to do whatever it wanted; you knew that when you wrote it.

THE WITNESS: I don't think that paragraph said that Local 1010 was that way.

THE ARBITRATOR: Not if you take the paragraph in its isolated form, but taking it in context with what you wrote

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about the Union not being aggressive, isn't the very purport of the article here to sort of indicate to the reader that we're indeed dealing with a very supine Union?

THE WITNESS: No. Only as an emphasis is what I put that in for, to emphasize that we should be a little more aggressive in our handling of these grievances. Otherwise we would -- you know, I'm just making a comparison that a company union has, you know, complete control. That's just an emphasis that I'm trying to point out.

THE ARBITRATOR: So that when you wrote the article, you knew that this was not a so-called company union.

THE WITNESS: Of course. I'm not in the least bit implying anywhere that it's a company union. It's a real good Union and I want to make it a better Union.

THE ARBITRATOR: All right.

Q Now, do you know Bill Ashlaw?

A Pardon?

Q Do you know Bill Ashlaw of the Company?

A William Ashlaw?

Q Yes.

A Do I know him?

Q Yes.

A I know who he is.

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Q Who is he?

A He's an employee of Avco.

Q And he's one of those employees of Avco who are in management and responsible for industrial relations, is that right?

A Yes.

Q And you spoke with him at your grievance hearing or discharge hearing, did you not?

A Yes.

Q And didn't you tell him --.

THE ARBITRATOR: Now, at this discharge hearing were you represented by Union officials?

THE WITNESS: Yes.

THE ARBITRATOR: And they were there throughout your hearing?

THE WITNESS: Yes.

Q Now, in the course of your discharge hearing, there was a reference to wildcat strikes as written in your article, is that right?

A Right.

Q And did you or did you not tell Mr. Ashlaw that, in effect, regardless of what the contract provisions said, if it was against your moral belief, you would act as you felt morally

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bound?

A Well, I --.

Q Could you explain that conversation?

A Well, I don't know where the wildcat -- you're connecting my moral beliefs and the wildcat. You're connecting them together. I don't think that's the way they were connected.

THE ARBITRATOR: Well, what is it that you told Mr. Ashlaw, if anything, about wildcat strikes?

THE WITNESS: I told him substantially what I said here: that I did not advocate wildcat strikes. I merely pointed out that at that time I believed individuals had that right. Perhaps they don't and I could be wrong on that. I didn't tell him at that time that I was wrong on that because at that time I still thought I was right. It's only now that I'm beginning to realize from counsel and different things and more research that perhaps individually people don't have that right.

Q But you told him that --.

THE ARBITRATOR: You knew, did you not, that a wildcat strike was injurious both to the Company and to the Union and to the members?

THE WITNESS: Yes, I did know that. And that's why I always opposed wildcats. I always tried to stop them. But--.

THE ARBITRATOR: But it's hardly likely that any

reader could honestly infer when you wrote that it's "comforting to have wildcats in our arsenal of weapons" to infer that you were against wildcats, isn't that so?

THE WITNESS: Well, I'd probably say that wildcats aren't the answer, which I believe it isn't the answer.

THE ARBITRATOR: I know, but from what you wrote for the reader to read and to accept, and you knew that this was going to be widely published by AIM, that it would be gotten into the hands of many of the employees of Avco, to possibly customers of the Company and the like, who might read this article, wasn't it a clear indication from what you had written that, quite to the contrary, you were advocating that it was a good thing to have wildcat stoppages?

THE WITNESS: No, not to have wildcat stoppages. I said to have it in the background. I thought it was a right at one time. I didn't ever imply it was a good thing to have wildcat stoppages, because I never liked them. They're bad for the Union. I thought that the best way to resolve these problems was to get at them immediately through the grievance procedure, which is very hard to do.

THE ARBITRATOR: Well, but you could have written an article in which you could say precisely that: that you were against wildcat stoppage strikes and that's not the way to handle

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the problem. The way to handle the problem is to resort to the grievance procedures and to get an expeditious hearing and a just determination of the case, isn't that right?

THE WITNESS: Well, yes. I could have emphasized it the way you did. It would have been a stronger way, but I still said substantially the same thing. It's probably not good to have the wildcats, and I believed that. And also it was good-- this was to encourage people to get a better grievance procedure, people in the grievance procedure to put more into it so that we could strengthen the situation that causes wildcats and then we wouldn't have to have wildcats.

THE ARBITRATOR: So that when you wrote the language of this article, that was your intention?

THE WITNESS: That was my intent. But the last part about the "arsenal of weapons" was only my belief at that time that there was still a right -- in the background I had the feeling that we had that right --.

THE ARBITRATOR: And you were trying to give that implication to your readers, that you had the right?

THE WITNESS: Yes. Unfortunately, it slipped out, my feeling that I felt that we had a right slipped out, and there it is staring me in the face. And I find that maybe it isn't legal. All right, I'll admit that.

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Q Didn't you tell Bill Ashlaw that when there is a conflict between your moral standard and the contract provisions, you act as you feel morally, regardless of the contract?

A Well, you know that's possible. You know, if someone asked me to kill somebody and it's in the contract, say a foreman would say you'd be insubordinate if you didn't kill your neighbor, I'd be insubordinate and I would violate that contract because morally I'd feel bound not to kill my neighbor.

Q Now, in your article we referred earlier to the statement with regard to the Company's sacred laws forbidding morality. Which one of those laws forbids morality, as you understand it?

A I don't know how it was in the context as far as morality.

Q Which Company law forbids morality, as you understand morality?

A Well, I'm not saying any specific law. I'm talking about specific policies and pressures put on individuals that are not based on whether it's good for the Company or good for the individuals that are involved, but on personal gain or whatever it is that some individuals perpetrating it would gain out of it. There's all kinds of things that are being done.

Q In that circumstance, you would act as you morally feel required to act, is that right?

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A Well, I didn't say I would violate any laws. I said that I would try to do whatever is possible to prevent people perpetrating immoral acts on other people.

Q Can you give us an example of which Company law, rule, regulation or requirement forbids morality, just one, which was the basis for your statement here in the article?

A I can't think of any offhand, no.

Q Now, calling your attention to the grievance procedure, you were a steward familiar with the grievance procedure, is that right?

A Yes.

Q And you're familiar that the final step in the grievance procedure is arbitration before an arbitrator, is that right?

A Yes.

Q And do you know that, according to the contract, the Arbitrator's decision is final and binding on the parties?

A Yes.

Q And do you realize the importance of the parties conforming with the Arbitrator's decision?

A Yes.

Q And do you realize the importance / that the parties believe that the Arbitrator is credible in exercising his judgment, that he exercises it fairly and without any corruption?

A Well, I don't know how you arrive at conclusions like that, but I don't know who's corrupt and who isn't corrupt. I'm not going to make that judgment. But I do know from living and experiencing that there are individuals who do things that are injurious to other people for personal profit and benefit.

Q Do you believe that if you were to criticize a judge downtown in the State Court and you had no basis for your belief that that would be improper?

A Yes, I would.

Q If you said that he's corrupt or he's paid off, that would be improper?

A Right. If I say it that way, it would be.

Q Right. Now, I call your attention to the first paragraph in the middle column on page 15 of your article. "In any event" -- this follows the reference to "it is comforting to have wildcats in our arsenal of weapons, just in case" -- "In any event, the company gets away with its devious and unfair labor practices because the company is above the law, (even the more naive realize this) and the biased judges and arbitrators, for all practical purposes, belong to the company. The most recent example was the firing of the twenty-two so-called 'hard core of miscreants.' From his Heavenly perch the 'impartial' Arbitrator, backing up the company, pronounced his God-like opinion upon us

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poor simple mortals while praising the pure-as-the-snow 'patient company' to the high heavens."

Now, with respect to that first sentence in that paragraph, the Company getting away with unfair labor practices and biased judges and arbitrators belonging to the Company, the basis of that statement, in your article, was the example you gave after the statement, is that right?

A Well, I think I was a little rash in my position. See, I began mildly enough by stating only that " for all practical purposes" is the way it operates because, you know, the final outcome of a thing usually -- the benefits usually accrue to the people at the top easier than the people at the bottom because by the time you get to the bottom,there's more people who have -- well, who are products of the college, who have a college education and the inclination to follow a corporate type of behavior, whether they're in the labor relations or whatever it is -- well, not labor relations, but lawyers and, you know, everybody falls in that category when they're professionals. They're a college man. And the tendency is -- well, people turn out to behave more uniformly toward a certain way of thinking because this is the way they're trained to do. So whether they're honest or dishonest -- most of them for the most part are honest individuals, but they believe that what they're doing is the proper way to do it. That's

the way they're taught to do it.

Q You know, or did you believe that this statement was completely true when you wrote it?

A That the Arbitrator made that award? At that time I felt that way, yes. I believed it at that time. I got more information now about wildcatting as such and the legality of it that I think there's no question about it. It was a very rash statement.

Q You believed at that time that the Arbitrator was biased and belonged to the Company at that time, is that right?

A At that time I believed it,yes. But I don't believe it now, though.

Q And you were certain at that time?

A Well, I believed it. I didn't have any proof to it and I didn't state that I had proof. The only thing that I stated, that made me say that was the fact, that he made that decision which I thought was wrong.

Q Now, what was the basis for your statement here that "the company gets away with its devious and unfair labor practices"? What devious and unfair labor practices are the basis for your statement?

A Well, there are a lot of them that happen daily in the plant, and mostly on the foreman and general foreman level. But

I can point out maybe a couple of things: bypass a person for promotion in personnel, and by the time the person finds out about it, it's too late to grieve it or something, and the Company would manage to get a person with a year's seniority promoted and bypass the man who might have been there ten years. It happened to me once.

Q Can you give me one specific situation?

A Well, I was bypassed for a promotion a year ago. And when I went to grieve it -- I found out about it eleven or twelve days later -- and I was told it was too late to grieve it. But they knew at the time that I had the necessary qualifications, seniority and everything else. And yet I was bypassed.

THE ARBITRATOR: Just a minute. As a result of that experience, did you feel any bias or animosity toward the Company?

THE WITNESS: Well, actually it wasn't too much of a surprise. I don't know why. Even though I know it's a rare occurrence, because as a steward I used to watch my promotions, and personnel used to promote pretty properly as far as seniority went in the area.

THE ARBITRATOR: Well, you felt aggrieved by the fact that a promotion was made that you felt you were entitled to, isn't that correct?

THE WITNESS: I was legally entitled to it, right.

THE ARBITRATOR: And you received sufficient information about it, you say, too late to file a grievance under the grievance procedure of the contract?

THE WITNESS: Yes.

THE ARBITRATOR: Now, you resented what the Company did, did you not?

THE WITNESS: Well, I didn't particularly like it.

THE ARBITRATOR: Now, was that one of the reasons for which you used the expression for your readers to understand and believe that "the company gets away with devious and unfair labor practices"?

THE WITNESS: Well, that was only one incident, but there are so many things that I know different individuals have gone through when they fight unfair labor practices, and it's a long, drawn out process.

THE ARBITRATOR: But at least your own personal experience was one of the things that animated you in writing that?

THE WITNESS: Well, that helped, yes.

Q Now, in 1967 you missed out on a job opportunity because you had been denied a secret security clearance, is that right?

A Yes.

Q Now, is that another reason for the basis of your belief here that the Company is devious and unfair?

A No. That had nothing to do with that, no. That was a normal process there. I'm talking about where they do something illegal, which is a daily occurrence there.

Q Now, with reference to the last paragraph on page 14: "Anyway, Avco, like all large corporations, has become sophisticated in its underhanded union busting tactics, which run the gamut from sweet talk, giving special privileges to company orientated candidates (such as allowing them to campaign on company time), using rats (stool pigeons), to making it miserable for and sometimes firing the really dedicated unionists, and last but not least, buying off whatever other effective opposition may be left with a foremanship."

Now, can you give us one example of the basis for your belief that the Company bought off opposition with a foremanship?

A You mean you want names?

Q Right.

A Well, I'm -- start with John Arnold? No.

Q Wait a minute, now --.

THE ARBITRATOR: You meant that as a joke?

THE WITNESS: It was facetious.

A No, I don't want to name names because everybody knows how many foremen are promoted --.

Q Name one.

A I don't want to name any names.

THE ARBITRATOR: Well, wait. Let me see if I understand something. Do you find any fault in the company making promotions from within the Union membership to management positions?

THE WITNESS: It's not promotions as such. Promotions, you know, if they're made on merit, ability and things like that, are all well and good.

THE ARBITRATOR: I'm not registering any complaint with your feeling in that regard. I'm merely trying to ascertain what it is. Do you feel that the Company has no right to ask a Union member, a Union steward, for example, if he would like to be promoted to a job within management? Do you find any fault with that?

THE WITNESS: No. It's not a fault in itself. I'm talking about the exclusiveness of the promotion coming to people who have performed as Union officials in some capacity, and it seems the promotions come quickest to those who seem to represent their members the least. And I've seen it, and many of the members who have experienced it know that they become foremen the quickest.

THE ARBITRATOR: So that you were trying to say in

the article then that the Company has used a system of favoring for promotion within management's ranks only such Union stewards who have been supine and willing to go along with the Company?

THE WITNESS: That's right.

THE ARBITRATOR: That's what you're saying, all right.

Q When were you saying that Union stewards who were aggressive were the ones who were made foremen?

A Who were what?

Q The Union stewards who were aggressive were the ones who were preferred for foremanships at the time.

A Not aggressive. The ones who were most aggressive and represented the people the most, the best, were often bypassed. But the ones that misrepresented their membership the most were promoted the quickest.

Q Well, the sentence or clause --.

THE ARBITRATOR: All right, that's what he says.

Q Now, can you give me one example of where the Company has made it "miserable for and sometimes firing the really dedicated unionists"? Give me one example of the basis for your belief in that statement.

A Well, when I said "fired," I don't mean that they were fired right on the spot because they were dedicated unionists,

but it's a long term harassment policy that befalls anybody who rubs the Company the wrong way. The word goes out to the floor to the foreman and the general foreman, and they get on the guy and they ride him. He ends up in the street one way or the other. Whether they fire him or do something rash or punch a foreman in the nose or something like that, one way or the other they push him until he goes out that door.

Q Can you give me one example?

A Well, I don't want to name names because I know of different individuals I could name.

THE ARBITRATOR: What's your objection to giving a name of somebody who has been victimized by the Company if indeed it has happened?

THE WITNESS: Well, I don't know what implications can fall on people. I don't want to get anyone involved unnecessarily.

THE ARBITRATOR: Well, if a man has been discharged as a victim of the Company's machinations and Union-busting tactics, what harm could come to the individual if you expose him? What harm could there come to an individual if you showed that the Company has been doing something of that nature to an individual, made it miserable for him, had foremen working on him so that the individual would lose control of his restraints and assault a

foreman, and such Union-busting tactics of that kind? Why do you have any qualms about saying who the victims were of the Company's actions at that time?

THE WITNESS: Well, it's something that is not of recent origin, and things that I've seen, not only in Avco but in other plants. And it's just there. I mean, I don't remember some of the/people actually, but I do remember --. names of the

MR. COX: I ask that the Arbitrator -- pardon me, I didn't mean to interrupt.

THE ARBITRATOR: Let him finish.

THE WITNESS: I just know of incidents of people who were harassed and intimidated and forced to quit.

THE ARBITRATOR: Well, what counsel is asking you is to name just one such individual at Avco who was subjected to this underhanded Union-busting technique and making it miserable for him, and have the foreman pick on him until he assaulted him or did some rash thing in violation of the contract.

THE WITNESS: I can't remember right now.

THE ARBITRATOR: Well, at any rate, it was your intention when you wrote the article for the reader to believe that these were things that the Avco management indulged in?

THE WITNESS: That was one of a number of things, yes.

(Short interruption.)

Q I just have a few more questions. With reference to this question of "firing the really dedicated unionists," did you know of any examples at the time you wrote your article?

A Well, I didn't know of any specifically in Avco. I did know of some in plants that I worked at before I came to Avco, but I wasn't specifically talking about Avco in that particular statement.

Q I see.

A It was just a pattern of behavior that I was pointing out, and I attributed it to most corporations.

THE ARBITRATOR: Including Avco?

THE WITNESS: Including Avco.

Q Even though Avco appears to be what we call in grammar the subject of the sentence, and is specifically mentioned. Now, do you know that -- you testified earlier as to where this newspaper is circulated -- do you know that the majority of Avco people live in that area of distribution, the majority of people that work at your Avco plant?

MR. BURSTEIN: Do you know, yes or no?

A I don't know.

Q That is the area of the plant, is it not?

A Well, the plant is in Stratford and the Third Congressional

District covers all the way up into Guilford.

MR. BURSTEIN: I would clarify for the record that the Third Congressional District does not encompass the Stratford area. It does not. I would like you to take judicial notice of that.

THE ARBITRATOR: I think there is a fault here in semantics. What counsel for the Company is seeking to indicate here is that Mr. Holodnak had noticed that people who worked in Avco lived within the confines of that Congressional District, and that was the purport of his question.

MR. BURSTEIN: All right.

MR. COX: Well, the Arbitrator can take judicial notice of where the Third Congressional District is, its proximity to this plant.

THE ARBITRATOR: I'm sure if you ask Mr. Holodnak the question in that form, he'll give you an adequate response.

Q Is the Third Congressional District contiguous to the plant?

A Yes, because Stratford is in the Third District.

Q Now, you testified earlier that when you write an article, everything may not be a hundred percent true, and you know that at the time you write it, is that right?

A Well, I'd come to the conclusion on a couple of points

here, as I pointed out earlier, that I'm not too sure about now. And you know, I'm just about as liable to make an error as anybody else.

Q And if you made an error, you wouldn't consider yourself corrupt or incompetent or stupid, would you -- or would you?

A No, I don't think an error is a reflection of a person's stupidity. I think stupidity is based on a person's inability to cope with problems in reality and begin to deal with them totally out of context, that they're just stupid actions.

Q And there have to be a large number of examples before you can so characterize a person, isn't that right?

A Oh, yes. It doesn't take one act. It takes a pattern of behavior, when you see a person is set, policies are set. And these are things that determine that.

Q Now, how many copies of this article did you personally distribute in the plant?

A I didn't distribute any at all, because I was terminated a couple of days after I had the article.

THE ARBITRATOR: Not referring to the published article itself as such that is Company Exhibit 1, but how many employees of Avco, if any, did you personally show a copy which became Union Exhibit 1?

THE WITNESS: About a dozen, maybe a dozen and a

half.

Q And you distributed those about the plant?

A I just had a copy which I showed to people and handed them personally.

Q You handed it to them?

A Yes.

Q Let them keep it?

A No. They read it and they gave it back.

Q Well, do you know that Rule No. 13 prohibits distribution in the plant --.

MR. BURSTEIN: That's not the subject of this arbitration. He specifically agreed --.

THE ARBITRATOR: Well, that's true. But there is a question here of a mental state in connection with Rule 19, and on the question of scienter and intent, I would permit the question.

MR. BURSTEIN: Except he hasn't asked him whether or not -- Rule 13 only applies to giving people things within the plant. We haven't established anywhere that he showed these things in the plant.

THE ARBITRATOR: Let him conclude his question so that we may rule on it and have a coherent record.

MR. BURSTEIN: Right.

Q Now, did you know that Rule 13 of the General Plant Conduct Rules states that "Distributing any written or printed matter, unless approved by management" --.

THE ARBITRATOR: Is a rule that is proscribed or condemned by General Plant Conduct Rules?

THE WITNESS: Well, I wasn't aware of it at that time.

Q Would you consider this an immoral rule? Would you have violated it/even if you had been aware of it?

A Well, I didn't think --.

MR. BURSTEIN: I object to that. It's purely speculative. It has nothing to do with this question.

THE ARBITRATOR: All right. Now, when you showed the copies to a dozen or a dozen and a half Avco employees, where was that -- in the plant itself?

THE WITNESS: Yes.

THE ARBITRATOR: During working hours?

THE WITNESS: Yes.

Q Now, were you yourself fired for your Union activities?

THE ARBITRATOR: I don't like the word "fired."

Q (Continuing) Discharged?

THE ARBITRATOR: Or terminated.

Q (Continuing) Or terminated for your Union activities?

A I was terminated for writing an article, I think.

Q Well, I note that subsequent to your termination you filed an unfair labor practice charge with the National Labor Relations Board which indicates that the Company violated Section 883 of that act by terminating you for your Union activities.

A Is that the reason I'm filing the thing? I think you have your information wrong.

Q Your position is you were terminated for writing this article, is that right?

A That was the reason for the termination. As far as the unfair labor practices go, the charges are being in the process of substantiation yet. That's different.

Q Your termination had nothing to do with Union activity, I take it?

A I don't think there's much connection there -- I don't know whether there was some motivation behind it or not. I couldn't prove it. But that's irrelevant. The point is I got fired for writing an article. What the motive was, I don't really know.

THE ARBITRATOR: Weren't you actually discharged, terminated or fired, which is the expression that you use, because of your alleged violation of General Plant Conduct Rule No. 19?

THE WITNESS: That's what the charge was, yes.

MR. COX: I have nothing else.

MR. BURSTEIN: Do you want to continue now or do you want to recess?

THE ARBITRATOR: Whatever you wish. Off the record.

(Following discussion off the record, at 1:05 PM the hearing was recessed for lunch.)

AFTERNOON SESSION

MICHAEL HOLODNAK

(Resumed Stand)

DIRECT EXAMINATION (CONTINUED)

BY MR. COX:

Q I noticed in my notes that during your testimony, Mr. Holodnak, this morning, you indicated that someone from AIM approached you to write this article. Will you tell us who that was?

A I didn't say that, did I?

MR. BURSTEIN: Yes.

THE WITNESS: Did I say approached me?

MR. BURSTEIN: I thought you did.

Q Well, whom did you approach or who was your contact man with AIM with respect --.

A I approached someone from AIM-- as a matter of fact, I don't recall the exact incident of who approached who. I know that suggestions were made to me to get it published and I thought of AIM. Now, I don't remember now if I had actually contacted AIM or through circumstances AIM contacted me. I don't know.

Q Do you know John Fernandez?

A Yes, I do know John.

Q Was he the man who contacted you; was he the contact man?

A No, I don't think he was.

Q Do you know that he's connected with AIM?

A I don't know that.

THE ARBITRATOR: Who is John Fernandez?

THE WITNESS: He's a fellow employee.

THE ARBITRATOR: At Avco?

THE WITNESS: Yes.

THE ARBITRATOR: Does he work with you?

THE WITNESS: Well, no, he doesn't. He's an expediter. I see him around the plant once in a while. I know him. I don't know him too well but I know him.

THE ARBITRATOR: All right. Was he one of the

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twelve men that had read your article?

THE WITNESS: No. I didn't show it to John -- well, maybe I did. I think I did. I did run across him one day and I gave it to him, yes.

THE ARBITRATOR: And did he have any comment to make about the article?

THE WITNESS: Yes. He just ignored it. He didn't say one thing or another about it. While other people did offer an opinion of it, he didn't say anything.

THE ARBITRATOR: He was the only one of a dozen or a dozen and a half that you showed it to that had no comment to make at all?

THE WITNESS: Well, I would say that, yes.

Q Have you ever written any books, aside from these articles that you've had published since 1960, have you ever written a book?

A Yes, I did.

Q How many books have you written?

A Well, I've written maybe four books, but I've had only one published.

Q I see. What was the name of it?

A The name of the book?

Q The name of the book.

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A "Tinsel and Ice." Back in 1960 it was published.

THE ARBITRATOR: And who was the press?

THE WITNESS: Vantage Press.

THE ARBITRATOR: Did it go into a soft cover?

THE WITNESS: No. It was a hard cover.

Q What was the subject of this book?

A It was just a general novel -- it was a novel about an individual working for a living.

THE ARBITRATOR: In an industrial plant?

THE WITNESS: In an industrial plant.

THE ARBITRATOR: And what was the theme of the other books that you had written that hadn't been published?

THE WITNESS: Basically the same, variations on them.

MR. COX: I have no other questions.

CROSS-EXAMINATION

BY MR. BURSTEIN:

Q Mr. Holodnak, at the time you wrote this article did you feel that you in any way were violating any of the General Plant Conduct Rules?

A No, not at all. I didn't think of that at all.

Q Had you given any thought to the General Plant Conduct

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Rules?

A Well, I didn't really think of them in terms of this article. The article I didn't think was -- I didn't think of the General Plant Conduct Rules at all.

Q Mr. Holodnak, if you had thought of them, and particularly Rule 19, would you have written this article without at least seeking other counsel as to the advisability of having it published?

A Well, then I would have thought about getting information about whether I ought to publish it or not. But at the time it never entered my mind that there would be any repercussions from my expressing my opinion.

Q Mr. Holodnak, did you knowingly, of your own knowledge, make any false statements in this article, any statements that you thought were false?

A When I wrote it, I didn't think any of the statements were false. I do admit to several errors that I think are errors now.

Q Now, were these errors of omission in that you failed to check, or errors of commission --.

THE ARBITRATOR: I ask that you let the witness testify and not lead on points that are critical.

MR. BURSTEIN: I'm on cross-examination.

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THE ARBITRATOR: Well, even so, I think the witness on the direct examination was given free rein to speak.

MR. BURSTEIN: All right.

A Well, just errors that cropped up later on. As far as I was concerned, when I was writing it, I was convinced of the truth of those statements. Later on, some of them may not be as true as I originally thought they were. But to the best of my knowledge, everything I wrote in the article was the truth because I tried to reflect as accurately as I could what was being expressed around the plant.

Q Mr. Holodnak, do you have any vicious or malicious feelings toward the Avco Corporation?

A It didn't enter my mind when I wrote that. I was concerned not so much with Avco as I was concerned with the fact that things were not running smoothly and people were griping about it, and I was more or less groping with this problem like everybody else. What everybody was talking about was something has to be done, something more firm has to be offered.

THE ARBITRATOR: Well, who is the "everybody" that was talking? How many people were those; were those the dozen or dozen and a half that you spoke to?

THE WITNESS: No, there was a lot more than that.

Q Mr. Holodnak, let me ask you this question --.

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THE ARBITRATOR: I would like to find out.

MR. BURSTEIN: I'm sorry.

THE ARBITRATOR: These people that were doing the talking, were these employees of Avco?

THE WITNESS: Yes.

THE ARBITRATOR: All of them?

THE WITNESS: Yes.

THE ARBITRATOR: No outsiders?

THE WITNESS: No.

THE ARBITRATOR: Can you list the names of the people that spoke to you about it?

THE WITNESS: Oh, yes, I could name a lot of people that work in these areas.

THE ARBITRATOR: That spoke to you about it?

THE WITNESS: Yes.

Q Supposing you do.

A What -- name them?

Q Yes.

A Well, I'd like to have a list of names -- see, I work in the 3D area, and most of them would be in that area. I don't happen to have a list of names right now. I'd just have to pick at random.

THE ARBITRATOR: Well, pick them at random.

THE WITNESS: Let me see. Ken Joiner, Frank Kunac--.

THE ARBITRATOR: How do you spell that last name?

THE WITNESS: K-u-n-a-c. Les Bodnar.

THE ARBITRATOR: Is that one name or two names?

THE WITNESS: One name. Dick Reed. I can't remember names that quickly.

THE ARBITRATOR: Well, these individuals that you say discussed it with you, were they discussing grievances with you?

THE WITNESS: No. It was just general statements made by people, you know.

THE ARBITRATOR: And was this during working hours?

THE WITNESS: Well, most of the time. Sometimes it would be standing in line ready to punch out or in the washroom, you know, washing up, or in the cafeteria, wherever you would run into each other.

Q Mr. Holodnak, do you have any feelings, malicious or vicious feelings against any of the members of the Union who are also employees of the Company?

A No, I haven't.

Q So that when you wrote this article, you felt that in no way were you being malicious or vicious toward any of the members of the Union?

A Well, I didn't intend to be malicious. I tried to point out what the problems were, as I thought they were. As I pointed out, I may not be a hundred percent accurate,but it was my intent to just point out the shortcomings. Now, I might have been very short of the mark, I don't know. But it was far from my motive, because I have no reason for animosity toward any Union member, or any officer for that matter.

Q How about members of the management?

A Well, management, they have their own problems and I have no special maliciousness against them. Why should I?

Q How long have you worked at Avco?

A Nine and a half years.

Q Did you have any warnings --.

A There's no warnings. My record is clear.

Q What labor grade are you in?

A I'm in Labor Grade 5.

Q Would you like to come back to Avco?

A Yes, I would.

Q Were you subjected to any pressures by any outside forces to write this article?

A No pressures at all.

Q Do you have a family?

A Just my wife.

PLAINTIFF'S EXHIBIT 8
Holodnak - C

Q When were you terminated?

A May 28th.

Q Since that time have you looked for employment elsewhere?

A Well, no. I went down the Employment Office and they told me there was nothing anywhere in the area in my labor grade.

Q Have you attempted any place besides the Employment Office to get a job?

A No, I haven't made any attempt, no.

Q What is your physical condition now?

A Well, it's not the way it used to be, but it's adequate enough to perform the job that I'm working at.

Q What caused the condition that you have? Was it an occupational injury or accident?

A No. It's arthritis of the spine.

Q How old are you?

A Forty-four.

Q Knowing what you do now about the fact situation which you have discussed this morning, would you have written this same article?

A Well, no, I wouldn't have, no. Well, now that I know some of the things that are not accurate, of course, I would never have written it. But as I say --.

Q And whether or not you wrote this article with an idea

of advocating any revolutionary form of overthrow of the corporate structure?

A I don't think anything in that indicates that at all.

Q You didn't have that in mind, did you?

A Not at all, no.

Q And as you said before, if you were to be reinstated, you would like to go back to work at Avco?

A Yes.

Q Would they be able to believe that you would not write such an article such as this again?

A Well, I don't know whether they would believe it or not. That's up to them. But the proof would be in whether I wrote another article.

Q Would you write such an article while you were in the employ of Avco?

A Well, no, I wouldn't write an article like that, no.

Q In other words, this article was as a result of certain mistakes you made?

A Yes. It's a result of thinking I have the right -- like people have been writing things in Avco for a number of years and it's been a common occurrence, and it just never occurred to me that I would be singled out and this would happen. All I did was express my opinion.

PLAINTIFF'S EXHIBIT 8
Holodnak - C

Q Did you feel that by expressing your opinion, it detracted from your loyalty to the corporation as such?

A Well, I don't see how. I think criticism of something doesn't necessarily imply -- you know, people criticize the United States or anything; that doesn't make them disloyal. Maybe they want to make corrections on the problem.

Q Now, do you feel in any way that you were disloyal to the Union in the articles or to the employees who were members of the Union?

A No, I didn't think I was disloyal at the time I wrote that.

Q In fact, actually were you not trying to better your lot?

A That was my intent -- my intent was to do that.

Q And also to make the Avco Corporation a better place in which to work?

A Right.

Q And you thought you had the constitutional right to do this under the right of free speech?

A That's what I felt.

Q Now you know that free speech, of course, may be surrounded with certain obligations?

A Yes.

Q And you're aware of it?

A Yes, I'm aware of it now, yes.

MR. BURSTEIN: I have nothing further.

RE-DIRECT EXAMINATION

BY MR. COX:

Q As an author -- would you consider yourself an author, Mr. Holodnak?

A No, because I don't make a living at it. If I made a living at it, I would say I was. But making a living at something like that is a very precarious situation unless you get up into the top few who are in the business who get a living wage. So I would just say it's more of an avocation than anything else. My true profession -- or what is it?-- my true occupation is a worker.

Q Well, during the course of writing four books and numerous articles, you came to know, did you not, that there are certain restrictions on what one can write, legally?

A Restrictions on what one can write? No, I still don't know that. I only learned today that there are restrictions on what one can -- well, you know, what they can write.

Q You mean when you wrote this article, you were of a mind that no matter what you said about anyone, it was all right; it was legal for you to do so?

A As long as I didn't slander anybody, which I didn't

slander anybody directly, or even indirectly. I didn't consider that slanderous at all.

Q But you did know it was wrong for you to write an article which would slander or libel someone?

A Well, I don't think I -- I wouldn't have the motive for writing a slanderous statement because I would have no reason for slandering anybody.

Q I was just wondering whether you knew that at the time you wrote the article, namely, that it was wrong to write an article that would libel anyone.

A No, I didn't think it was wrong. I thought people had the right to slander as well. I saw slander every day in magazines or newspapers as well, or any publication. The reason they were able to get away with it, I learned, was because of the Constitution which says that they have the freedom of the press. And the only time they're subject to libel is if the person they slander has been injured in any way, like was fired or someone did something abusive to him because of the article, well, then the person would show cause and be able to sue him for slander. Yet the right to slander is still there. The Constitution gives you the right to slander anybody you want.

Q You stated earlier this morning that you might have been a little rash when you wrote certain language in this article.

Looking back now, could you have done a little more checking on the matter that you wrote about?

A On the which?

Q On the subject matter you wrote about. You could have done a little more checking before you wrote it, couldn't you?

A Are you talking about a specific paragraph?

Q Yes, any of those we discussed with you today.

A Well, when I was writing it, I assumed that everything I was writing in there was accurate.

Q If you were to write it over again today, would you do a little more checking?

A Well, yes. I already have a knowledge of some of the errors in it.

Q And with reference to your attitude toward the Company, wasn't it only a few months before you were discharged that you refused to obey a supervisor with respect to punching out, where you should punch out?

A Well, that was another problem.

THE WITNESS (To Mr. Burstein): Is that relevant to this?

MR. BURSTEIN: I don't believe it's relevant at all, but it doesn't hurt.

THE ARBITRATOR: It may affect his credibility.

PLAINTIFF'S EXHIBIT 8
Holodnak - RD

What was the problem?

THE WITNESS: Well, the problem was there was a difference of opinion about the right of the foreman to make a certain request. See, what the Company had done was to remove all the time clocks from the plant and install computers where you punch in with the badges. Now, prior to the computers, people would stand in line and punch the clock, punch the time cards at a very rapid speed; and no matter how long the line was, people got out of there in a matter of one or two minutes. But the Company improved this operation, the time-keeping operation, and saved themselves a tremendous amount of money, which is all well and good. There's nothing wrong with that. They improved it and streamlined it and they automated it. But the trouble was it deteriorated our working conditions. We were standing in line and waiting anywhere from six minutes before we were able to punch out because the badges didn't come out of the machine quick enough, the way the time cards were automatically put in by hand. So we had to wait for the badges to be ejected, and all that took time.

So these computers were all throughout the plant. And we had a line in our department, in the 3D area, that was very, very long. So I thought there was nothing wrong with going -- not only I, but other people were doing it. It was just a policy throughout the plant, people were just doing it --.

PLAINTIFF'S EXHIBIT 8

THE ARBITRATOR: What were they doing, doing what?

THE WITNESS: Going to other computers to punch out. That meant some of them were going closer to the parking lot where they parked, so that when they'd punch out, they were closer to the lot.

THE ARBITRATOR: Well, what was it that you refused the direction of the order of the foreman, in what respect?

THE WITNESS: Well, when other people were going to different computers to punch out and I was standing in line waiting for six minutes to get out, I decided to do the same thing that others were doing anyway. So I punched out at a clock that was more convenient to me where I get out. And I wasn't there any earlier than normal. It was just that I was punching out on a different clock. There were less people there and you get out easier.

THE ARBITRATOR: I still don't know what you were supposed to have refused. What did you refuse?

THE WITNESS: Well, when I did that, the foreman told me not to do it any more. Everybody was doing it. I told him, "Are you telling me to do it after 3:30? I no longer have to work. Now you're telling me I have to stay here six minutes later." In other words, he gave me an order --.

THE ARBITRATOR: What was the order he gave you?

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THE WITNESS: To punch out where he assigned me.

THE ARBITRATOR: Where you were assigned to work?

THE WITNESS: Yes.

THE ARBITRATOR: Now, didn't it occur to you that if you had any grievance in regard to that that your obligation was to do what he said under protest and file a grievance?

THE WITNESS: Well, that's what I was going to do but -- see, what happened, it happened the night before quitting time and there was no time to put in a grievance. So I was going to put it in on the following day.

THE ARBITRATOR: Well, did you put it in on the following day?

THE WITNESS: Yes, I did, but then I already received the termination hearing.

THE ARBITRATOR: Oh, I see.

Q Now, with respect to one more question I have: when this article was sent by you for publication to AIM, you realized that it would go out into the community, go where AIM went, didn't you?

A Well, I had a general idea that it would be published to the people who lived mostly in the Third District.

Q To people who may not work in the plant or have any connection with the plant, right?

A Yes.

Q And did you also realize that your accusations might cause the Company name in the community to be tarnished, the reputation of the Company to be affected adversely?

A Well, I don't know whether it could be or not. That is not for me. I don't know how many people subscribe to that.

Q Well, isn't it reasonable to suspect that when an article is published that says the Company is incompetent and dishonest and says what this article said, that people will think less of the Company after reading it than they did before?

A Well, I don't know. I don't know about that. I couldn't tell you.

Q Did you have any concern about that effect?

A I don't know.

Q Did the Company's reputation in the community concern you?

A I don't think that a corporation, a multi-million dollar corporation, is going to be so adversely affected by an individual that works there. If it does, then there must be something very wrong with the corporation, very insecure. Because I think the Company is much bigger than any little criticism that is thrown at it. So I don't know that that would be a big problem as far as a person or individual reading it, whether it would be.

Q Didn't you realize that the Company's business could be

adversely affected depending upon what the community thinks of it?

A Well, probably that's true. But I don't know that I would have that much of an effect on the corporation.

Q Do you know David G. Bannon, who is a contributor to the Stratford News?

A To the what?

Q The Stratford News.

A No, I don't know him.

Q You have never had any contact with him --.

A I never heard the name.

Q -- that you know of?

A No.

MR. COX: I have no other questions.

THE ARBITRATOR: Do you know if your publication of "Building a Union Local," which is Company Exhibit 1, was quoted in other newspapers in this area or any other press or periodicals?

THE WITNESS: My article?

THE ARBITRATOR: Yes.

THE WITNESS: To my knowledge, I don't know.

THE ARBITRATOR: All right.

MR. BURSTEIN: I have nothing further.

MR. COX: Just one minute.

PLAINTIFF'S EXHIBIT 8
Ashlaw - D
Holodnak - RD

THE ARBITRATOR: Do you know whether or not it was the subject of any editorial comment in any other newspaper or publication?

THE WITNESS: I don't know. I heard something about the Stratford News which I think he's referring to. Someone else mentioned it to me too and I haven't seen it, but somebody mentioned that something was published in the Stratford News about problems at Avco. Now, I don't know whether I'm involved in that or not. I haven't read the article.

MR. COX: I don't have any more questions.

MR. BURSTEIN: Nothing further.

THE ARBITRATOR: All right. Next witness.

MR. COX: The next witness will be Bill Ashlaw. Thank you.

WILLIAM ASHLAW

called as a witness on behalf of the Company, being first duly sworn by the Arbitrator, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. COX:

Q State your name and your position with the Avco Company.

A William Ashlaw, Supervisor of Labor Relations.

Q Concerning the Holodnak grievance, you conducted the

PLAINTIFF'S EXHIBIT 8
Ashlaw - D

discharge hearing, did you not?

A I did.

Q And can you review for the Arbitrator --.

THE ARBITRATOR: Well, before you review anything, will you be kind enough to put on the record what notification was given to the Union, what representation the man had at the hearing and who attended?

THE WITNESS: An AVO was issued, copies to the Union and employee. It said there would be a disciplinary hearing held at Labor Relations. And I was present, Mr. Foster --.

Q Who is Mr. Foster?

A He's with Industrial Security. And for the Union: Mr. Mezick was the committeeman who was present, Frank Guida was the steward, and Mr. Holodnak. The meeting was convened with those parties present.

THE ARBITRATOR: Who was the Union steward?

THE WITNESS: Mr. Guida, G-u-i-d-a.

THE ARBITRATOR: And who was the Union committeeman?

THE WITNESS: Mr. Mezick over there (indicating).

Q Now, these men were present during the entire meeting?

A They were.

Q Now, tell the Arbitrator the colloquy that went on between you and Mr. Holodnak and other people at the meeting with

reference to this grievance.

A I informed the Union that it was a disciplinary hearing to inquire into a subject that had come to the attention of the Company possibly in which Mr. Holodnak might have been involved. I had the article that is the subject of the disciplinary action against Mr. Holodnak. I asked him if he were the Michael Holodnak whose name appeared to be the author. He said that he was.

I asked him if he wrote it. He said that he did write it.

I ask Mr. Holodnak if he espoused and embraced the sentiments and the statements that were made in that article, and he said that he did, otherwise he would not have written it. I told him at this juncture that I considered that this article and the sentiments and the statements and the allegations contained therein were in violation of Plant Conduct Rule 19.

I asked Mr.Holodnak if he had distributed it in the shop, or if anyone had, or if he had shown it to anyone in the shop. He told me that he did not.

Q Had shown what to anyone in the shop?

A The article referred to here.

THE ARBITRATOR: Are you referring to the article which is now in evidence in this proceeding as Company Exhibit 1?

THE WITNESS: I am.

A (Continuing) He asked me how I got it. I told him it had been brought to our attention. He and then Mr. Mezick both stated that I could not state for certain that it had been distributed in the shop or shown to anyone in the shop, and therefore I couldn't charge Mr. Holodnak with a violation of Plant Conduct Rule 13 --.

MR. MEZICK: 19.

THE WITNESS: No, 13. That's the distribution of letters rule.

A (Continuing) I told him I could not at that juncture state for certain whether he had so I was not considering that in his disciplinary action.

And I informed Mr. Holodnak that he was in violation of Plant Conduct Rule 19. He asked me in what fashion this applied, and I proceeded to point out to him those portions of the article that I felt specifically were malicious, vicious and false, and invited his comments as to each portion that I read and pointed out to him. During the hearing as I went down the article and pointed out to him, I asked him if he still or at that time believed this, embraced it or espoused it, and he said that he did.

I specifically pointed out to him the one where he made the statement that it was comforting to know that we had the wildcat strike in our arsenal of weapons. I asked him what he

PLAINTIFF'S EXHIBIT 8
Ashlaw - D

meant by that, and he said that this was a tool that the Union had to enforce wrongs or alleged wrongs, and to seek a remedy. I asked him wasn't this in itself malicious and inflammatory, intending to incite people, and he stated that there were times when it became necessary for the Union to resort to wildcat strikes even if it were against the provisions of the Labor Agreement per se.

Q Did you talk about moral beliefs in relationship to the Labor Agreement?

A I stated to Mr. Holodnak that from the way he had written this article and the way he was talking to me that it appeared that he had very strong and firm convictions. And he stated that he did, and that he felt that if a situation arose that he believed in strongly enough, that he would take whatever means he felt were necessary, even if it violated the Labor Agreement or the contract.

Q What opportunity, if any, did you give him to save his job?

A I told Mr. Holodnak that if he disavowed the article that I would present this opportunity to him. He said he would not disavow it; that anything he wrote he believed in, it was true.

I told him that if he made a public denial, and he said that he was not about to do that, he believed in what he

PLAINTIFF'S EXHIBIT 8
Ashlaw - D

said.

At this point I went back to the article and pointed out specifically to Mr. Holodnak the areas in which I felt that he had violated Plant Conduct Rule 19 again, pointing out, first of all, that the allegations were false that the Company was engaging in devious and unfair labor practices; that the Company had the Arbitrator and the judges in their pocket, and that this statement in itself was of such a nature to create among the employees or people who read this, dissatisfaction, not only with the Company and its mode of operation but the actual grievance procedure itself; that it would undermine the nature of the grievance procedure and the integrity of the judges, the Arbitrator and those people who were charged with the administration of it.

I pointed out that the very statement of his in the area was of such a nature that it would bring adverse comment and discredit to the Company and the name and whatever reputation we had in the community.

I pointed out that the article wherein he stated that a wildcat strike was a valuable tool or aid, as he called it, was meant to do only one thing: to incite the people to use this weapon which does nothing but create disharmony, problems, and an expense to both the Company and Union members.

Q All right. Was the man then terminated?

PLAINTIFF'S EXHIBIT 8
Ashlaw - D

A After this point I informed Mr. Holodnak that we were terminating him for violation of the Plant Conduct Rule 19.

The Union asked me if this is what he was being terminated for, and I once again reiterated to Mr. Holodnak and Mr. Mezick the actual rule.

At this point Mr. Holodnak made the comment that he had a right under the Constitution to express whatever opinions or write whatever he wanted to and could not be held -- these could not be held against him.

Q All right.

A I told Mr. Holodnak that he would be held to task in our society for anything that he may have said or written. And he asked me at this point were we suing him for libel? He said that truth was a defense to libel. And I informed Mr. Holodnak that if he was making the statement here that what he said was true and he could prove everything that he said was true, then certainly it would not be libel.

MR. COX: All right. Now, I have no other questions.

(Three-minute conference between Mr. Burstein and the witness.)

MR. BURSTEIN: We have nothing to ask.

MR. COX: I have just one more question. You know now -- well, strike that. I have no other questions.

THE ARBITRATOR: Have you consulted with Union counsel, and is there anything you wish to say?

MR. BURSTEIN: We're going to bring that out on direct. Is that not so, Mr. Holodnak?

MR. HOLODNAK: Yes.

MR. COX: We have just one short witness, Mr. John Foster.

JOHN FOSTER

called as a witness on behalf of the Company, being first duly sworn by the Arbitrator, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. COX:

Q State your name and occupation with the Avco Company.

A John E. Foster, Assistant to the Director of Industrial Security.

Q Your qualifications aren't in dispute here, I don't imagine, but previously you have had several years with the government in private industry in the industrial security area, have you not?

A Since 1965.

Q And during those years, you have become familiar with security clearances for industry?

A I have.

Q And can you tell the Arbitrator -- strike that. And at my request you made a survey based on official documents of the number of clearances and the number of rejections over a representative period of time, is that right?

A I have.

Q What period of time have you chosen and selected?

A Starting with basically the present regulations in 1960 when the Executive Order 10865 was promulgated --.

MR. BURSTEIN: Could we have a recess for five minutes?

THE ARBITRATOR: Certainly. Is that for the purpose of conferring with the witness?

MR. BURSTEIN: I would like to confer with Mr. Cox and you.

(Short interruption.)

THE ARBITRATOR: As a result of the conference of counsel, it was pointed out by Union counsel and Company counsel during the recess that the matter that the Company wished to bring out through this witness was already covered and brought out by Mr. Holodnak, so that there is no necessity for his testimony, and he is being withdrawn.

MR. COX: I am withdrawing his testimony, and now

PLAINTIFF'S EXHIBIT 8
Holodnak - D
Foster - D

I withdraw the witness.

MR. BURSTEIN: Thank you.

THE ARBITRATOR: Is that consented to?

MR. BURSTEIN: That is certainly consented to.

MR. COX: Thank you, Mr. Foster.

THE WITNESS: You're welcome.

MR. COX: The Company rests.

MR. BURSTEIN: Mr. Holodnak, you have been sworn in.

MICHAEL HOLODNAK

called as a witness on behalf of the Union, having been previously duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BURSTEIN:

Q Under the procedure that was adopted here, Mr. Holodnak, I want to express to you on the record, you were called as a direct witness by the Company, and at that point I had the right to cross-examine you, which I did. I now, as your attorney, am calling you as a direct witness, do you understand that?

A Yes.

Q I want to ask you this, sir: You heard Mr. Ashlaw testify as to what went on in the termination hearing. Was

everything he said true to the best of your recollection?

A To the best of my recollection, there were some errors in there.

Q What were those errors?

A Well, one of the errors I was able to write down was the statement about the wildcat strike bit, in which he claimed that I said that whatever means was necessary should be used. I never used that term, to my knowledge. And I think Joe, who was sitting at the hearing, I don't think he heard it either.

Plus the fact that there was no mention at the hearing to my recollection about him offering whether I want to withdraw or disavow it, because his answer to Joe Mezick's question as to whether he wanted to lessen the charge was a sharp rebuttal in which he said, "No, nothing short of termination," was his answer. And yet he came up with things that we haven't heard. Now, I don't know, you'll have to ask Joe who was sitting at the hearing whether he heard the same things I did.

THE ARBITRATOR: And the "Joe" you're referring to, who is that?

THE WITNESS: Joe Mezick is my committeeman who sat at the hearing.

Q Is there anything else that wasn't so, as you recollect?

A Well, there were a couple of things that weren't exactly

accurate, but I don't recall them now. But they were bordering around the strike clause, statements around there. He made them sound far differently than I had actually written them or stated them.

THE ARBITRATOR: You mean he drew different inferences from the article that you had written?

THE WITNESS: No. I think he was quoting what I said at the time. He said that I said that I would use whatever means is necessary in order to accomplish something, whatever words he said. But he was quoting me, but he wasn't quoting me accurately.

Q Mr. Holodnak, you have covered pretty thoroughly your reasons for writing this article, when you did it, how you did it, how it got into the newspaper, and so forth. Is there anything further you wish to add to this hearing that might aid the Arbitrator in his decision as to how you wrote the article, why you wrote the article, whether you had any spirit of maliciousness or viciousness, or whether or not you knowingly made any false statements? Do you have anything further to say to the Arbitrator at this time? I know he'll give you free rein to say whatever you have to say.

A Well, I can only repeat what I said earlier: that I wrote the thing basically because there were problems in the

plant. People were talking about problems, and I thought I would contribute something toward helping resolve some of these problems.

I didn't think I was going to wave a magic wand and clear all the problems, by no means. I never had any inkling at all in my mind that anything would come out of it outside of maybe a few people being inspired to do something worthwhile to building a better Union, which was my basic motive. It was the only motive I had in writing that thing.

Now, maybe I rubbed people wrong in some areas, I don't know. But whatever it is, I began with the premise that what I was writing was the truth. I don't know what else I could add. There was no malicious intent.

Q Had you known about Rule 19, would you have written the article?

A Well, see, the reason Rule 19 didn't enter it was because everybody was writing things, and if a person gets an idea to write something, they write it. A leaflet comes out, people pass it around, and there were no repercussions in all the years that Avco existed. People have expressed themselves freely so it never occurred to me that I would suddenly be the one that would get terminated actually for writing something that everybody has been doing right along. And everyone wrote basically the same thing I had written.

Q If somebody had been terminated or had some sort of punishment as a result of writing this article, would you have written this article?

A Then, of course, you're aware of the problem and you're not going to stick your head into a problem if you know that you're going to run into trouble doing it. But I had no inkling at all that I would get into any trouble.

THE ARBITRATOR: What other employee of Avco, to your knowledge, had an article published by some outside publisher other than yourself?

THE WITNESS: Well, I thought it was going to be easier because what they told me they would do --.

THE ARBITRATOR: Would you answer my question? What other employee, if any, had an article similar to Company Exhibit 1 in evidence published by some outside publication?

MR. BURSTEIN: You mean a newspaper or --.

THE ARBITRATOR: Yes.

THE WITNESS: I don't know. I know there have been several people from Avco who have written letters in the newspaper even about problems in Avco.

THE ARBITRATOR: About problems?

THE WITNESS: Right.

THE ARBITRATOR: But was there any that had

substantially the same tenor and context as your article?

THE WITNESS: Well, some of them I read had some of the problems like that, yes.

THE ARBITRATOR: Some of the problems?

THE WITNESS: Yes. The letters were much more brief. And as far as publishing in a magazine like that, I don't know of any others that were done. There might have been but I don't know. I never saw any.

Q Did you ever read any articles or see any articles published by Mr. John Fernandez in any of the local papers?

A Yes, I did. I read some of those.

Q And were those articles similar to the ones you wrote?

A Well, I don't know whether you would say they were similar, but they did have criticisms too. They were critical letters.

THE ARBITRATOR: Have you got copies of them?

THE WITNESS: Well, no, I don't have any.

THE ARBITRATOR: What kind of letters were those--letters written and sent in by readers to a newspaper that the newspapers published?

THE WITNESS: Yes.

MR. BURSTEIN: There's also one, if I may add to that --.

PLAINTIFF'S EXHIBIT 8

Q Did you ever read a certain leaflet that was published by Mr. Fernandez in which he attacked the Union quite vigorously?

A Well, I don't know which one it would be because I read quite a number of his leaflets.

Q And whether or not these leaflets attacked the Company and the Union?

A Yes, there were a number of them.

Q And these were published in Avco, handed out at the gate, were they not?

A Oh, yes.

Q And has anything been done to Mr. Fernandez?

A No, just as there was nothing that was done to any of the people who were doing that. It was a common occurrence. There was nothing unusual about what John was doing. Maybe he was more critical than most people, but everybody in the Local had the right to write leaflets.

THE ARBITRATOR: Well, was your testimony accurate when you said that you had only had a brief discussion with Mr. John Fernandez? If he had been a critic of both the Union and the Company, as you say, is that the only discussion that you had with him, that you showed him your article, Company Exhibit 1, and he had no comments to offer at all?

THE WITNESS: Well, he didn't comment anything on

that particular article.

THE ARBITRATOR: Although he had been very frank in his criticism about the Company and Union in some article he had written himself and disseminated?

THE WITNESS: That's true.

THE ARBITRATOR: He made no comment about yours?

THE WITNESS: He didn't say anything. He just nodded, and I think he mumbled something, but he didn't make any comment.

THE ARBITRATOR: You can't remember what he mumbled?

THE WITNESS: Well, I don't think he mumbled -- he actually said, "Yeah," and just handed it to me.

Q Did you ever read the leaflets which Mr. John Fernandez wrote and published throughout the plant in which he accused certain employees of malfeasance in office?

A Yes, I think I did.

Q Do you know whether Mr. Fernandez was ever punished in any way for this?

A Not to my knowledge.

THE ARBITRATOR: What were these Union officials he was complaining about -- Union officers, stewards, committeemen?

THE WITNESS: Well, different ones.

THE ARBITRATOR: And, of course, you're familiar,

as a former shop steward, that that would be an inter-union problem that they could handle within the framework of their constitution?

THE WITNESS: Well, I don't know whether it's much of a problem, frankly, because John Fernandez has been doing that for a large number of years, and I don't know how many people take him seriously.

THE ARBITRATOR: Do you mean this man wrote an article in which he said certain Union officials were dishonest and crooks?

THE WITNESS: Oh, I read many of them like that.

THE ARBITRATOR: By Fernandez?

THE WITNESS: Well, I think Fernandez has written at least one.

THE ARBITRATOR: In which he named Union officials as being crooks and dishonest?

THE WITNESS: I think so, yes.

THE ARBITRATOR: And you read many other articles by people saying --.

THE WITNESS: I read them but I don't necessarily pay attention to them. Yes, that's true, I read many articles by John Fernandez.

MR. COX: I wonder when these articles were written.

THE ARBITRATOR: When were these articles written?

Does it encompass the Union officials now in office?

THE WITNESS: Well, the last one I read, they happened to be the current officials, yes. Then there were others in different ads that I read about.

Q And whether or not --.

THE ARBITRATOR: Wait a minute. I would like to find out about it. Does that express your feeling too?

THE WITNESS: No. I just happened to have read them. I didn't say I agreed with what he said.

Q Whether or not although these --.

THE ARBITRATOR: Were you intending any such inference to be drawn from your article, Company Exhibit 1?

THE WITNESS: No, none at all. I didn't make any intention to do that.

THE ARBITRATOR: I see.

Q Did you think that these articles that were written by Mr. Fernandez were false or malicious or vicious?

A Well, they could be categorized that way.

Q And they were against an employee in the plant or employees?

A Yes, they were.

Q And whether or not the Company took any action against Mr. Fernandez?

PLAINTIFF'S EXHIBIT 8
Holodnak - D

A Nobody took any action.

THE ARBITRATOR: Well, where were these disseminated; these publications that you've been referring to as emanating from Mr. Fernandez, where were they disseminated -- in the plant?

THE WITNESS: Sometimes they get them at the gate. Sometimes someone will hand them to you.

THE ARBITRATOR: Who was the someone who handed out Mr. Fernandez' material?

THE WITNESS: Well, sometimes maybe Fernandez may-- I don't know how everyone gets them. Sometimes I'd get one from an individual that finished reading it and he'd hand it to me and I would read John Fernandez.

THE ARBITRATOR: And this was handed out at the gate at Avco from employees coming in?

THE WITNESS: Sometimes they are and sometimes they're not.

THE ARBITRATOR: I'm talking about the ones you're referring to in your testimony where allegedly Fernandez accused present Union officials of being crooks and dishonest.

THE WITNESS: Well, most of them I read when I got them in the plant.

THE ARBITRATOR: When was this, how long ago?

THE WITNESS: Well, I don't know. I guess a couple

of months back or so.

THE ARBITRATOR: Was that your frame of mind when you made references in Company Exhibit 1 to the Union and the Union officials?

THE WITNESS: Pardon?

THE ARBITRATOR: I say, was that your opinion at the time, with knowledge of those articles, that you made references in Company Exhibit 1 in evidence when you wrote this article?

THE WITNESS: See, that didn't influence me at all, one way or another, because I have my own opinions and John Fernandez' opinions don't necessarily --.

THE ARBITRATOR: Well, what opinion were you trying to convey in regard to the Union and its officers?

THE WITNESS: Well, I wasn't saying that anybody was a crook or anybody was stealing money or anything of this kind.

THE ARBITRATOR: But what were you saying about them?

THE WITNESS: I was saying there's a lot of shortcomings, and I can quote the paragraphs.

THE ARBITRATOR: I know, but what were the shortcomings you had in mind that you were talking about?

THE WITNESS: Well, primarily we had a bogged down

grievance procedure at that time. I see it has improved considerably, though, but there was a very bad situation and our grievances were long and outstanding.

THE ARBITRATOR: That was in the past?

THE WITNESS: Right. Well, this is where most of this has come out, out of those experiences. Now, today there's a different set of problems. Maybe the problems that were there two months ago don't exist any more. But at that time there were a lot of these problems, and that's what I was directing my attention to. I wasn't trying to slander anybody.

THE ARBITRATOR: But you indicated in your testimony that you have a constitutional right to slander or libel anybody, didn't you?

THE WITNESS: I said I thought that people had the constitutional right because all the years I've been writing, and I see all the various slanderous magazines around, I assume that they have that right under the Constitution. And only if a person hurts the person, you know, by a slander, then they can be sued. But I still don't see anything wrong with -- I think it's a constitutional right, people should have a constitutional right. Because how can you say shut it off -- at what point? Because who is going to say what's good and what's bad? Allowing free speech, that's what the constitution guarantees. I'm not saying

I'm going to engage in slander, but I'm saying it's a necessity we have to live with if we don't want to have censorship.

THE ARBITRATOR: What's your opinion of your own article? Don't you think you slandered the Company in your article?

THE WITNESS: No, I didn't think I slandered them at the time I wrote it.

THE ARBITRATOR: What do you think now?

THE WITNESS: Well, I think there might be some misconceptions that could be changed there, and some things that were not exactly --.

THE ARBITRATOR: True -- not exactly true?

THE WITNESS: Well, I don't know -- probably not exactly true.

THE ARBITRATOR: All right.

Q Did you read the article by Mr. Fernandez in which he called the Union officials goons?

A Yes, I think he did.

Q The one in which he claimed a certain Union janitor, and who was also an employee of the Company, slugged him?

A Yes.

THE ARBITRATOR: And do you know of your own knowledge what, if anything, the Union did about this?

PLAINTIFF'S EXHIBIT 8

THE WITNESS: I don't think they did anything.

MR. BOOTH: Off the record.

(Discussion off the record.

Q Is there anything further you have to say about writing this article, Mr. Holodnak?

A Well, I was wondering about it that you said that my experience with John Fernandez was casual. Well, that's about all it is. As I say, the only time -- everybody knows who John Fernandez is in the plant. He's a personality, you know; he's a guy who's -- I don't think many people pay attention to him.

THE ARBITRATOR: So the record is complete here, who is he? Is he a management official?

THE WITNESS: No. He's a Union member.

THE ARBITRATOR: Is he a Union official?

THE WITNESS: No.

THE ARBITRATOR: Is he an employee of the Company?

THE WITNESS: Right.

THE ARBITRATOR: In what department, do you know?

THE WITNESS: Well, he's an expediter.

THE ARBITRATOR: All right.

MR. BURSTEIN: That's all.

PLAINTIFF'S EXHIBIT 8
Holodnak - C

CROSS-EXAMINATION

BY MR. COX:

Q Now, in Fernandez' work as expediter, he goes from department to department, doesn't he?

A Right.

Q And he comes in your department occasionally?

A Well, I see him occasionally but I don't see him that often.

Q Well, you see him regularly?

A No, not on a regular basis.

Q Now, with respect to the notes to which you referred in your testimony, could we have a look at them?

A What notes?

THE ARBITRATOR: Well, you had a little book there that you were reading out of at one point in your testimony.

MR. BURSTEIN: He just made that while he was testifying.

THE WITNESS: I just made that notation when Ashlaw was on the stand.

Q Could we see that, just to satisfy ourselves?

A (Witness handed document to Mr.Cox.) The word "By whatever means was necessary," I found wasn't accurate.

Q That's the only entry you have?

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A That's the only thing I copied. There was one other thing that went past me, and I forgot what it was.

Q Now, don't you realize that you stated in your testimony that you believe that people should have free speech, that there should be no slander or libel restrictions, is that right?

A That there shouldn't be?

Q That there shouldn't be, right.

A I say that there aren't, according to the Constitution. And I believe that the Constitution is correct in that.

Q Now, suppose someone came to your wife and you and observed that you two were people of ill repute, you committed some terrible crime or were living in sin or said something to cause everybody in the community to shun you; would you say that's his right, he has the right to say that, it's free speech?

A No. If a person did that, then they would be open for libel because you could prove in a court of law that the people are shunning you and you could get witnesses. There's actual repercussions from the libel or slander, there's a libel suit. The only way you can have a libel suit is you have an injury first. Just making the statement alone, and it just rolls off like water off a duck's back, then it's harmless and you can't do anything about it, sue him or anything.

Q See, the general principle of law in libel is when you

print something --.

THE ARBITRATOR: I'm not here to have you discuss principles of law with this gentleman.

MR. COX: All right.

Q With respect to your article --.

THE ARBITRATOR: What we're trying to find out here in this proceeding is whether or not this gentleman violated General Plant Conduct Rule 19, "Making false, vicious or malicious statements concerning any employee or which affect the employee's relationship to his job, his supervisors, or the Company's products, property, reputation, or good will in the community."

Q With respect to Rule 19, you have seen it on the bulletin board many times, haven't you?

A Well, to tell you the truth, I've seen the Plant Conduct Rules on the board but I never really stopped to read them.

THE ARBITRATOR: Well, don't you know that the General Plant Conduct Rules have emblazoned on it, "In any enterprise there must be rules and regulations togovern the activities of the people involved in its operation. The following rules and regulations have been developed for use at Lycoming Division so that we may work together in an orderly manner without encroaching on the rights and privileges of others. The below

PLAINTIFF'S EXHIBIT 8
Holodnak - C

listed rules constitute prohibited conduct. Offenses under these rules may be cause for suspension or discharge"?

Now, didn't you ever read these rules that have been in existence here for many, many years? They're emblazoned on the bulletin board. THE WITNESS: I read them but I didn't really imprint them in my memory or anything. I imagine I read them a couple of times.

THE ARBITRATOR: All right. Did you read the legend at the foot of it, "Proper attention to duties and the use of good judgment by all employees will eliminate the need for disciplinary action under these rules. This list of rules is not intended to be all inclusive and engaging in such other practices as may be inconsistent with the ordinary, reasonable, common sense rules of conduct necessary to the mutual welfare of the Company and its employees will also subject the individual to discipline"? Weren't you aware of these legends on the rules which are published and exhibited throughout the plant? Did you read those things?

THE WITNESS: Well, I did read them but --.

THE ARBITRATOR: They didn't register?

THE WITNESS: Well, I just read it and that was it. I just forgot them. I didn't think I was violating any rules or anything.

PLAINTIFF'S EXHIBIT 8

Holodnak - C

Q Didn't you work with these rules when you were a Union steward?

A I always follow rules, whatever rules and procedures are necessary; more or less, we all follow them.

Q And you processed grievances based on these rules and violations of them?

A Well, the grievances were based mostly on our Labor Agreement, violations of the Labor Agreement.

THE ARBITRATOR: But didn't you represent any individuals, as a steward, who had been charged with violation of one or more of the General Plant Conduct Rules?

THE WITNESS: Yes. And I would refer to that specific item and we would look at it and see it and handle it accordingly. But it's not like something that you memorize all the general rules.

THE ARBITRATOR: I don't intend that.

Q Now, one of the things you testified as the reason for the article was the log jam of grievances, is that right?

A Well, that was one of the reasons.

Q All right. Now, didn't your article indicate that the way to break that log jam was to have the Union act more militantly?

A Yes. When I say "militantly," I didn't say they should go in there with an axe and start chopping away or burning the

PLAINTIFF'S EXHIBIT 8
Holodnak - C

plant down. You know, to be more aggressive is to be more firm in getting more things accomplished for the members and the people you represent.

Q And also, when you're more militant, you also, to use the word in the sense you use it in this article, act more unreasonably, isn't that right?

A I didn't say it could be unreasonable. I just tried to point out in that article how reasonable is being used.

THE ARBITRATOR: You mean misused by the Company?

THE WITNESS: Misused, right.

THE ARBITRATOR: By the Company?

THE WITNESS: Many things that they tell us are reasonable are very, very unreasonable. But this is what I'm trying to point out.

Q And apparently you also indicate that the Union uses the word "reasonable" improperly too if they tell the employees to be reasonable?

A Well, in a couple of instances. There was one that specifically used to do it quite a bit. But not generally. The Union doesn't do it generally.

Q And the final question is: With respect to these Fernandez records which -- incidentally, the best evidence would be to see these leaflets and brochures if there are any around --

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~~Holodnak - C~~ 144

isn't it true the Fernandez leaflets to which you referred were campaign literature when Fernandez ran against the incumbent Union people at the plant?

A I didn't catch that question.

THE ARBITRATOR: Here's what he's asking you: These articles by Mr.Fernandez, or leaflets as you called them, weren't they leaflets that he distributed when he was running for Union office against an incumbent Union officer?

THE WITNESS: Some of them were, yes.

Q And in that same connection, that's what you referred to in the article about the Company giving preference to Company-oriented candidates, such as allowing them to campaign on Company time?

A One of them.

Q Is that the election to which you're referring?

THE ARBITRATOR: That was the election, was it?

THE WITNESS: That was only one election. There's a lot of elections that took place there.

MR. COX: All right. I have no other questions.

MR. BURSTEIN: I have no other questions.

Mr. Ashlaw, would you take the stand, please?

THE ARBITRATOR: Recalled.

PLAINTIFF'S EXHIBIT 8

~~Ashlaw - D~~ ~~145~~

WILLIAM ASHLAW

recalled as a witness on behalf of the Union, having been previously duly sworn, took the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. BURSTEIN:

THE ARBITRATOR: You understand you're under oath?

THE WITNESS: Yes, sir.

Q Mr. Ashlaw, how long have you been in the job which you now hold?

A Since March, 1968.

Q Did you have access to the records of your predecessor in that job?

A I did.

Q Would you tell us whether or not either in the records to which you had access or during the tenure of your job, anyone has ever been terminated at the Avco Lycoming plant for violation of Rule 19?

A To my knowledge, no.

Q Now, a few moments ago, there was a question by Mr. Cox about the Company's asking people to be reasonable. Did you hear that question?

A Yes, sir.

Q Are you aware of a letter --.

THE ARBITRATOR: Wait a minute. Let's get that in its proper context. He was referring to the Company Exhibit 1 in the use of the language "reasonable" vis-a-vis "unreasonable, et cetera, by the grievant in the article.

MR. COX: Now, let me say this, if I might respectfully point it out: I was a little bit vague about who used the term "reasonable" in the article. I think the Arbitrator then asked the question indicating that the Company asked the employees to be reasonable. But in fact it's the Union who is referred to in the article who, quote, "keep telling us to be 'reasonable'." So my question, when I did ask the question, referred to the Union asking the membership to be reasonable.

MR. HOLODNAK: Well, the way it is --.

THE ARBITRATOR: If you wish to say something, we'll permit it after he gets through.

Q Mr. Ashlaw, prior to working on this job, where did you work, prior to taking over the job in March of 1968?

A I worked for a textile corporation.

Q And before that?

A Chrysler.

Q And you've been in labor relations all this time?

A Yes, sir.

Q Did the companies for which you worked have a rule similar to Rule 19?

A Every company for which I worked, yes, sir.

Q Did you ever know of anybody who was ever fired for violation of this rule in any of the companies you worked for?

A Yes,sir.

Q Who?

A We fired two people at Chrysler at that time -- we used the word "terminated" -- who had the same International.

Q But nobody was terminated by Avco --.

A During my tenure, Mr. Holodnak was the first person terminated. Prior to that, I said not to my knowledge.

MR. BURSTEIN: No further questions.

MR. COX: One question.

CROSS-EXAMINATION

BY MR. COX:

Q To your knowledge, has anybody ever been fired by the Company for unfair labor practices and found to be so fired by an NLRB decision?

MR. BURSTEIN: That's irrelevant.

MR. COX: Well, there was a statement in the article that the Company has fired people for Union activities

so I'm just going to that point.

A I didn't follow your question.

THE ARBITRATOR: Let's read the question back.

(Last question was read.)

THE ARBITRATOR: Do you understand the question in that form? What counselor is trying to ask you is this: Has any dischargee during your time of office, or from your research of the records prior thereto, been discharged and who subsequently made a complaint to the NLRB that it was an unjust discharge because of Union activities, which was sustained by the Board and found the Company had committed an unfair labor practice against an individual for Union activities?

THE WITNESS: No, sir.

MR. BURSTEIN: I have nothing further.

MR. COX: I do not either.

MR. BURSTEIN: Mr. Mezick, take the stand.

THE ARBITRATOR: Did you want to say something else at one point?

MR. HOLODNAK: Well, there was a point you raised there. I forgot what it was now.

THE ARBITRATOR: All right. If you think of it and you wish to ask about it, you will be given that opportunity.

PLAINTIFF'S EXHIBIT 8
Mezick - D,C
Ashlaw - C

JOSEPH MEZICK

called as a witness on behalf of the Union, being first duly sworn by the Arbitrator, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BURSTEIN:

Q Mr. Mezick, it has been testified here that you were present at the termination hearing at which Mr. Ashlaw was present, Mr. Holodnak, Mr. Foster and perhaps one or two others whose names escape me. Will you tell us whether or not Mr. Ashlaw gave Mr. Holodnak any opportunity for recant or to retract his statement?

A To the best of my knowledge, he did not.

Q Although he testified that he did?

A Right.

MR. BURSTEIN: I have nothing further.

MR. COX: Only one question.

CROSS-EXAMINATION

BY MR. COX:

Q Do you recall in that same hearing thatMr. Holodnak was asked whether he distributed literature, namely, this article--.

THE ARBITRATOR: Company Exhibit 1.

Q -- this article, Company Exhibit 1, in the plant and he

denied that; do you recall that?

A Yes, I do. He denied it.

MR. COX: I have no other questions.

MR. BURSTEIN: I have nothing further.

Mr. Holodnak, do you have anything else you wish to add at this hearing?

MR. HOLODNAK: It's true I denied it, right. The one that I did distribute was the original one. I guess that point was made.

MR. BURSTEIN: You have a copy of the original here, do you not?

THE WITNESS: Yes, there's a copy.

MR. BURSTEIN: This is the article except for certain changes?

MR. HOLODNAK: Certain changes were made.

THE ARBITRATOR: What changes -- grammar, spelling?

MR. COX: In other words, the Company asked you whether you distributed this article and you said no, meaning that the Company was thinking about the article when it was put in the magazine?

MR. HOLODNAK: That's right. He referred to this newsletter.

MR. COX: You didn't clarify that.

THE WITNESS: Well, as far as I was concerned, I thought that's all he meant and I thought everybody else in the room thought the same thing.

MR. COX: Off the record.

(Discussion off the record.)

MR. BURSTEIN: Anything further?

MR. COX: Nothing further.

MR. BURSTEIN: We have nothing further. We rest. I'd like to argue.

THE ARBITRATOR: Well, I have no objection to an argument but I submit that --.

MR. BURSTEIN: It will be short.

THE ARBITRATOR: It isn't a question of time. You have all the time you want to take. I would assume that the parties intend to file briefs in this matter.

MR. COX: I think it's such a significant matter that we would want to.

MR. BURSTEIN: This is one time I agree with the Company. We should file briefs.

THE ARBITRATOR: Well then, we would then assume that we would find that argument within the framework of the brief.

MR. BURSTEIN: Yes.

PLAINTIFF'S EXHIBIT 8
Mezick - C

THE ARBITRATOR: All right. Decision reserved. How long do you gentlemen want for briefs?

MR. BURSTEIN: Thirty days.

MR. COX: Thirty days following the receipt of the transcript.

THE ARBITRATOR: Gentlemen, you can exchange briefs, each one sending me an original. Now, if, after receipt of the briefs, either side wants additional time to make any reply to it, I will keep the matter under advisement for that purpose so that there will be a full and adequate presentation by both sides of anything they want to submit in this proceeding.

MR. BURSTEIN: I'd just like to ask Mr. Holodnak this question.

THE ARBITRATOR: Well then, I'll open the hearing for that purpose.

MR. BURSTEIN: Mr. Holodnak, do you feel that you've been properly represented at this hearing?

MR. HOLODNAK: Yes, I do.

MR. BURSTEIN: There hasn't been any pressure on you to make that statement, has there?

MR. HOLODNAK: No.

MR. BURSTEIN: You feel you've had every opportunity to present everything you wanted to; the Arbitrator gave you

every opportunity to make any statement, even out of the time process, in other words, ad lib; you had all the opportunity necessary?

MR. HOLODNAK: Yes.

MR. BURSTEIN: Thank you.

THE ARBITRATOR: All right, the hearing is closed and the parties will submit briefs within thirty days after the receipt of the transcript as has been previously indicated on the record.

(The hearing was adjourned at 3:40 PM.)

MR. COX: There is one thing that wasn't in the record that should be in.

THE ARBITRATOR: Counsel for the Company has indicated that they now desire to reopen the case as did the Union previously with the statements that were made through Mr. Burstein by Mr. Holodnak. And I'll permit you now to reopen.

MR. COX: I'll just call Mr. John Arnold as a Company witness.

PLAINTIFF'S EXHIBIT 8

JOHN J. ARNOLD

called as a witness on behalf of the Company, being first duly sworn by the Arbitrator, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. COX:

Q State your name.

A John Arnold.

Q What is your position with the Avco Company?

A Director of Industrial Relations.

Q How long have you been Director?

A Four years.

Q How long have you been active in Industrial Relations at this Avco plant?

A Thirteen years.

Q Now, there was a question by Union counsel, Mr. Burstein, as to whether there had been previous discharges for violation of Rule 19. Has there been any?

A There were two to my recollection. There may have been more.

Q Would you tell the Arbitrator which ones?

A Yes, there was one of a foreman, a Union President by the name of Paul Tucker, who had undertook to publicize and distribute literature in the plant. That was in '57 or '58.

PLAINTIFF'S EXHIBIT 8
Arnold - D

MR. BOOTH: '56.

A (Continuing) Then the recent case that the Arbitrator heard, namely, one Amelia Pickering, who was discharged for the same Plant Conduct Rule.

Q All right. Now, throughout this hearing there has been an adversion or references to the wildcat strike at your particular plant. Going back over the last ten years, can you just detail for the record, briefly, the number and the frequency of the wildcat strikes at this plant?

A The wildcat strikes became a major problem during the period of the 1964 Labor Agreement -- that is when it was negotiated -- the one that expired in 1967, where we had 22 wildcat strikes in that area. All of them for that period of time, they were correct in the use of the term in industrial relations.

Q 22 within a three-year period?

A Yes.

Q Now, in 1968 how many wildcat strikes were there?

A There were two to my recollection. I'll have to look at the record to ascertain if there were any additional ones.

Q Now, calling your attention to page 15 of this exhibit and the reference there to the discharge of 22 -- I believe there's a reference in the use of the word "miscreants" -- was there an arbitration decision involving 22 employees who were

PLAINTIFF'S EXHIBIT 8
Arnold - D

discharged for violation of the no-strike clause?

A There was an arbitration with respect to the discharge of 22 employees that were involved in wildcat strikes.

Q And when was that arbitration?

A It was in June of 1968. I believe it was on the 20th and 21st, give or take a day.

Q And as a result, what was the award of the Arbitrator?

A The Arbitrator wrote a lengthy opinion and award sustaining the discharges.

MR. COX: Now, the Company asks leave to introduce this opinion into evidence. I know that both parties have it already. We do not have it physically present today --.

THE WITNESS: I believe it's a published award, incidentally.

THE ARBITRATOR: Well, suppose you send for it right now.

MR. BURSTEIN: Is that the award on the 22?

MR. COX: Yes.

MR. BURSTEIN: You can put it in.

THE ARBITRATOR: Is it consented then that can be received as Company Exhibit 3?

MR. BURSTEIN: Yes.

THE ARBITRATOR: It will be received as Company

Exhibit 3.

(The document referred to was received in evidence to be marked Company Exhibit 3 when received.)

THE ARBITRATOR: Now, is there any question that that was the award that was referred to in Company Exhibit 1?

MR. BURSTEIN: No.

THE ARBITRATOR: Does that reflect Mr. Holodnak's sentiments also? That's the award that you were referring to --.

MR. BURSTEIN: The 22 men who were fired.

MR. HOLODNAK: Yes, I think I was.

THE ARBITRATOR: Is there anything further by either party?

MR. BURSTEIN: May I ask one question of Mr. Arnold?

THE ARBITRATOR: Surely.

CROSS-EXAMINATION

BY MR. BURSTEIN:

Q Before the present regime of officers went into office in 1967, I believe it was, there had been 20 wildcat strikes during the period of the predecessors in office, had there not?

A At least.

Q And there were two during the period that this regime

is in office?

A Correct.

Q And both times this regime immediately took all steps, as you have already testified to in earlier arbitrations, to stop the wildcat strike?

A Correct.

Q Did everything within the labor contract?

A I didn't hear that last question.

Q Did everything within their power within the terms of the labor contract to stop the wildcat strike?

A Yes. It was testified to in considerable detail during those proceedings.

Q And Mr. Turkus then awarded the award you were just referring to?

A That's right.

MR. BURSTEIN: That's all. Thank you.

THE ARBITRATOR: Now, do both sides rest?

MR. BURSTEIN: Do you have any questions of Mr. Arnold?

MR. HOLODNAK: No, I don't think so.

THE ARBITRATOR: The hearing is closed at this point, and the same reference should follow here at this point about the briefs to be exchanged by the parties within thirty days

PLAINTIFF'S EXHIBIT 8

after the receipt of the transcript.

(The hearing was adjourned at 3:50 PM.)

PLAINTIFF'S EXHIBIT 8

I N D E X

WITNESSES:

	Direct	Cross	Re-Direct
Michael Holodnak	11	97	106
William Ashlaw	114		
John Foster	121		
Michael Holodnak	123	138	
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Joseph Mezick	149	149	
John J. Arnold	154	157	

UNION EXHIBITS:

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Grievance No. B-29062 of Michael Holodnak, dated May 28, 1969	1	3

JOINT EXHIBITS:

Contract between Company and Union dated April 16, 1967 - April 15, 1970	1	3
Plant Conduct Rules	2	3

COMPANY EXHIBITS:

"AIM - The American Independent Movement Newsletter, Vol. 4, No. 10, May 15, 1969"	1	16,19
Order Re Application for Confirmation of Arbitration Awards, dated December 10,1968	2	63
Cease and Desist Order and Award issued by Burton B. Turkus, Arbitrator dated 6/21/68	3	159

PLAINTIFF'S EXHIBIT 9.

LOCAL 1010, UAW	(	ARBITRATION NO. 9378
and	(	GRIEVANCE NO. B-29062
AVCO LYCOMING DIVISION AVCO CORPORATION STRATFORD, CONNECTICUT	(	SEPTEMBER 10, 1969

GRIEVANCE OF MICHAEL HOLODNAK

B R I E F

This brief is in re Michael Holodnak, who was terminated for violation of Plant Conduct Rule No. 19. Said termination was grieved under Grievance No. 29062 and in due course has arrived before the permanent arbitrator.

The gist of the present proceeding is that grievant wrote a certain article or essay which was published in a politically oriented newspaper published by the American Independent Movement and published under the name of "AIM". Said article, it is claimed, is in violation of Plant Conduct Rule No. 19 which reads as follows;

> "Making false, vicious or malicious statements concerning any employee or which affect the employee's relationship to his job, his supervisor, or the company's products, property, reputation, or good will in the community." (T-9)

This Rule No. 19 has been in effect since 1951 (T-10).

The nub of this proceeding is whether or not the statements made in the abovementioned article were "false, vicious or malicious" in nature. To that end we must direct ourselves to various and sundry considerations, i.e. did grievant know and understand that the statements were false, vicious and [illegible],

EXHIBIT NO. 9

were they actually one, false, two, vicious, and three, malicious, and if so, what if any extenuating circumstances are there to mitigate the ultimate in punishment, termination, and further, if by having allowed such activities as are attributed to grievant to go unpunished, and permitting similar activities on the part of others to go unpunished concurrently with and previously to grievant's alleged activities, the company has not waived its rights to punish so summarily and without warning.

It is of value at the onset to learn something of the nature and background of the grievant. Michael Holodnak came to work at Avco on January 18, 1960, (T-14) and it is well to note that no warnings against him were introduced, nor were any disciplinary measures shown. He graduated only from grammar school and became self-educated to a relatively high level (T-28) and, as the transcript throughout bears out, became politically conscious to an inordinate degree. This originally unlettered man eventually authored, in addition to the article at bar, some four books, one of which, "Tinsel and Ice" was published in 1960. The subject of this book, as in his other unpublished books, was a novel about an individual working for a living in an industrial plant (T-97).

It is said, "A little knowledge is a dangerous thing", and so it is with Michael Holodnak - that which he knows is but a scintilla of what he doesn't know! At the time he wrote the subject article, he believed that employees had the constitutional right to a wildcat strike (T-57, T-61). He actually believed at the time he wrote the article that people had the right to libel or slander one another (T-107) - he further believed the

EXHIBIT NO. 9

Constitution gave that right! (T-107). Testimony throughout is replete with examples of this man's superficial knowledge, which because it was gleaned informally, is oftimes wrong and even childlike in its naivete. Should he be punished because of mistaken ideas, credor and beliefs? He has struggled hard to rise from the sewer of ignorance - should he be penalized, and so grievously, because his attempts to learn have exposed him to wrongful tenets?

It is respectfully submitted that grievant really knew not what he was doing, neither the legal implications, nor the ultimate consequences, and that the arbitrator should consider this in making his decision as to whether the termination was proper and just.

The next question to be considered is whether the statements were false, vicious or malicious. The latter two can be dealt with quite summarily, because nowhere in the evidence were facts brought out by the company's witnesses which would indicate viciousness or malice on the part of grievant. In fact, Holodnak testified that he had no vicious or malicious feelings against members of the union, who are also employees of the company, and no such feelings as against management (T-101, 102). Further, he stated he wrote the subject article because of thinking he has since found to be mistaken (T-104). He further stated that his criticism of the company did not detract from his loyalty to the company, and cited as an example - that criticism of the United States doesn't make a person disloyal (T-105) - and further that at the time he thought he had the Constitutional right of free speech (T-105).

EXHIBIT NO. 9

Now, as to the falsity of the statements, grievant feels that he erred in beliefs rather than made false statements (T-96). He states that now he knows some of the things in the article are not accurate and if he had known this at the time of writing the article, he would not have written it (T-103). He states at (T-126), "Now, maybe, I rubbed people wrong in some areas, I don't know. But whatever it is, I began with the premise that what I was writing was the truth. There was no malicious intent."

It would appear, it is submitted, that any statements that might appear false were not believed to be false when written and that this necessary element of proof fails particularly against the background of grievant.

Now, as to a waiver of rights by the company. It would appear that for a long time prior to the article written by grievant, the company had contrabanded articles, letters, and throwsheets to be published in and about the plant that were as much if not more of a violation of Rule No. 19 as were grievant's article (T128-129). Particular reference was made to one John Fernandez, alleged author of many little tidbits attacking the company, the union, and individuals in both, and of Mr. Fernandez' apparent immunity either to censure or punishment (T-129 et seq.) In fact it was brought out that Mr. Fernandez named union officials as being crooks and dishonest in one of his publications (T-131) - even the current officials (T-132) - and these facts were brought out by the company's direct examination. The arbitrator brought out that Mr. Fernandez claimed in an article that the union officers were goons, and falsely claimed therein that a union janitor, an employee of the company, had slugged him (T-136), and that he still is in the company's employ as an expediter (T-137). Mr. Arnold, Director of Labor Relations,

EXHIBIT NO. 9

testified on direct examination that on only one occasion in his long tenure was a person discharged under Rule No. 19 for publishing literature and that was either in 1957 or 1958 - at least eleven or twelve years ago (T-154). In fact, he testified that there were only two discharges ever for violations of Rule No. 19, and the other was not for a publication but rather for another violation within Rule No. 19 (T-155).

The arbitrator is too sophisticated to necessitate citing from the literally hundreds of cases relating to waiver of rights by the company. Suffice it is to say that by its indulgence and non-action under Rule No. 19, the company lulled grievant into a sense of false security and is now estopped from punishment under Rule No. 19 without adequate well-publicized notice to all employees.

In view of all of the above, it is respectfully submitted that the arbitrator should find in favor of grievant, Michael Holodnak.

LOCAL 1010, UAW

By BURSTEIN, GOLDMAN & ROSEN
Its Attorneys

PLAINTIFF'S EXHIBIT 10.

In the Matter of the Arbitration

- between -

AVCO LYCOMING DIVISION
AVCO CORPORATION (STRATFORD)

- and -

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. AND LOCAL 1010

Grievance No. B-29062: Arbitration No. 9378

A W A R D

The undersigned, having been duly designated as the arbitrator in accordance with the terms and provisions of the collective bargaining agreement of the parties, and after having duly heard the proofs, allegations and contentions of the parties, and after due consideration and deliberation with respect thereto, hereby finds, decides, determines and renders the following:

A W A R D :

1. The proof establishes the just cause for the discharge of the grievant, Michael Holodnak, with conclusive finality.

2. The grievance herein and with respect thereto, accordingly, should be and hereby is in all respects denied and dismissed; and the action of the Company in discharging the said Michael Holodnak is hereby fully sustained and affirmed.

Dated: New York, N.Y.
November 18, 1969

Burton B. Turkus, Arbitrator

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

On the 18 day of November, 1969 before me personally appeared BURTON B. TURKUS, to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Notary Public

CLAIRE HELLER
NOTARY PUBLIC, State of New York
No. 24-0173000
Qualified in Kings County
Commission Expires March 30, 19 71

PLAINTIFF'S EXHIBIT 15.

COPY

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF CONNECTICUT

Civil Action No. B-15

MICHAEL HOLODNAK,

Plaintiff

vs.

AVCO CORPORATION, AVCO-LYCOMING DIVISION, STRATFORD, CONNECTICUT

and

WILLIAM ASHLAW, LABOR RELATIONS DEPARTMENT AVCO CORPORATION, STRATFORD CONNECTICUT

and

LOCAL 1010, UNITED AUTO WORKERS OF AMERICA, STRATFORD, CONNECTICUT

and

RUSSELL BOOTH, PRESIDENT LOCAL 1010, UNITED AUTO WORKERS OF AMERICA, STRATFORD, CONNECTICUT

Defendants.

FILED
JUN 4 12 07 PM '73
CLERK
U.S. DISTRICT COURT
BRIDGEPORT, CONN.

DEPOSITION OF

GEROGE A. JOHNSON

PURSUANT TO NOTICE, the Deposition of GEORGE A. JOHNSON, called as a witness for oral examination by leading questions under the applicable rule, was taken at the HALL OF JUSTICE, 2025 - 14th Street, Boulder, Colorado, beginning at the hour of 1:30 o'clock in the afternoon of the 16th day of March, 1973, before Gary Blando, a Certified Shorthand

PLAINTIFF'S EXHIBIT 15

Reporter and Notary Public in and for the State of Colorado.

A P P E A R A N C E S

MR. DONALD C. PETERS, Attorney at Law, Legal Aid and Defender Program, University of Colorado, Boulder, Colorado 80302;

MR. EDWARD H. HAFFEY, Dosh, DeMoulin, Anderson and Campbell, Attorneys at Law, 6780 East Hampden Avenue, Denver, Colorado 80222;

MR. GERALD A. CAPLAN, Caplan and Earnest, Attorneys at Law, 1301 Spruce Street, Boulder, Colorado 80302.

MR. PETERS: For the record, this is a deposition in the proceedings of Michael Holodnak vs. Avco, et al. I am Donald C. Peters and I am appearing of counsel for Sosnoff, Cooper and Whitney, 35 Elm Street, New Haven, Connecticut. I am a member of the Colorado Bar and Federal District Court Bar in Colorado.

At this time I would ask the other parties present to identify themselves and enter their appearances for the record.

MR. CAPLAN: Gerald A. Caplan, I'm a member of the firm of Caplan and Earnest in Boulder, Colorado. I appear as Colorado counsel for the firm of Goldman and Rosen, particularly David Shepro of that firm, and we are attorneys for the defendants, Local 1010.

MR. HAFFEY: I'm Ed Haffey of the law firm of Dosh,

PLAINTIFF'S EXHIBIT 15

DeMoulin, Anderson and Campbell, appearing as Colorado counsel for Avco Corporation.

GEORGE A. JOHNSON,

called as a witness for oral examination by leading questions, being first duly sworn, was examined and testified as follows:

MR. HAFFEY: We are Colorado counsel for one of the defendants in this action and because we are not familiar with the law of the state where this will be tried I would like to make an initial objection insofar as it might be proper under a Deadman's statute that could be utilized in court to bar such testimony. It is my understanding that at least a portion of the testimony in this deposition will concern conversations with the man who is now deceased and who was an attorney in Connecticut, Mr. Burstein, and I would like that objection to be a continuing objection, if I could have that stipulated to.

MR. PETERS: That's fine.

MR. CAPLAN: I'll join in that objection.

EXAMINATION

BY MR. PETERS:

Q State your name, please.

A My name is George A. Johnson, J-O-H-N-S-O-N.

Q What is your address?

A Fleming Law Building, Boulder, Colorado.

PLAINTIFF'S EXHIBIT 15

Q What is your present occupation?

A I'm an Assistant Director and a Staff Attorney with the Legal Aid and Defender Program at the University of Colorado School of Law here in Boulder.

Q What Bar admissions do you hold?

A I'm admitted to practice in the State of Colorado, State of Pennsylvania, State of Connecticut. I'm admitted also in the Relevant Federal Circuit Courts, the 10th, 2nd, the 3rd and the Relevant Federal District Bars, District of Colorado, District of Connecticut and Eastern District of Pennsylvania.

Q Did you previously participate in any capacity in this litigation?

A Yes, I did.

Q Please state the nature of your participation.

A I was the counsel for Michael Holodnak, H-O-L-O-D-N-A-K, who is the plaintiff in this action.

Q Have you withdrawn from this case?

A I have filed a Motion to Withdraw as counsel citing reasons therefor. The motion, as I understand it, has been noticed and will be heard in Bridgeport, Connecticut, on March 19th of this year, that was pursuant to a request by Magistrate Arthur Latimer, L-A-T-I-M-E-R, a request made by him at the pre-trial conference in this action.

Q Do you have any remaining fee interest in this case?

GARY BLANDO
CERTIFIED SHORTHAND REPORTER
BOULDER, COLORADO 80302

PLAINTIFF'S EXHIBIT 15

A None.

Q Did you anticipate collecting a fee in this case?

A My original agreement with Mr. Holodnak was that I would share in any award which he might get but I have since renounced that interest and assigned whatever interest I have in this case to Mr. Sosnoff, S-O-S-N-O-F-F.

Q Please explain how you came to represent the plaintiff.

A Well, this case arose in 1969 and at that time I was practicing in New Haven as a sole practioner. One of my clients at that time was the American Independent Movement which I'll call by its abbreviation AIM. One of the activities of AIM was the publication of a newsletter called the AIM Newsletter. The AIM Newsletter had a circulation at that time of around 700. I published articles of interest to AIM members on which AIM members thought would be of interest to the public. One of the interests of AIM was the union movement.

Q And would you explain how Mr. Holodnak ties in to your representation of him.

A Yes. Sometime in 1969 Mr. Holodnak wrote an article for the AIM Newsletter which was published under the title "Building a Union Local." It later transpired that Mr. Holodnak was discharged from his job at the Avco, A-V-C-O, Corporation presumably as a result of our

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BOULDER, COLORADO 80302

PLAINTIFF'S EXHIBIT 15

publication of this article by him. My client, the AIM Newsletter was very concerned about this. It was obvious to them and to me that if people could be fired as a result of articles which they wrote for our newsletter then our sources of articles would dry up and in general that would have a chilling effect on our ability to present news items of interest to the New Haven community and to AIM members.

Q Do you know a man named Edward Burstein?

A Yes, I do. That's B-U-R-S-T-E-I-N.

Q How do you know him?

A I knew him at that time as counsel for Local 1010, United Auto Workers.

Q Did you have any conversations with him about AIM's interest?

A Yes, because of AIM's concern about this case I decided to see what I could do to help Holodnak. I determined that Mr. Burstein was counsel for his union, Local 1010, and a call to Mr. Burstein was made. I looked up his number in the yellow pages of the Bridgeport Telephone Directory, called his office and asked for him and his secretary put him on the phone. I explained to him my concern and the fact that I represented the AIM Newsletter and I understood Mr. Holoknak had been fired because of an article which he had published in the newsletter and I told Mr. Burstein that I was anxious to help him in any way he thought fit and, as I

PLAINTIFF'S EXHIBIT 15

recall the conversation, he hadn't known anything about the case but he readily accepted any help that I had to offer.

MR. HAFFEY: At this point I would like to enter an objection that I anticipate would lie to other testimony that will come out; that is any testimony as to conversations as to what Mr. Burstein may have said to Mr. Johnson which I believe would clearly be hearsay and I would object to it on that basis.

MR. PETERS: Objection noted.

Q (By Mr. Peters) Do you recall the date of this conversation?

A Well, in fact I think there was a little more to the conversation. He told me at that time that he knew nothing about the case but that he was going to get --

MR. CAPLAN: Object as being not responsive.

Q (By Mr. Peters) Do you recall the date?

A I think it was July 8th, 1969.

Q And what was the substance of that conversation that you haven't already related?

A As I recall, he told me that he would meet with Russ Booth who he told me was the President of Local 1010 in a day or two and he would discuss the case and then get back to me, discuss Holodnak case and get back to me.

MR. HAFFEY: At this point I would again like to make certain that my objection to this testimony is a

PLAINTIFF'S EXHIBIT 15

continuing one as far as conversations from Mr. Burstein to you.

MR. PETERS: I understand.

MR. CAPLAN: And it is a joint objection by each defendant.

Q (By Mr. Peters) Do you have any records of this telephone conversation with Mr. Burstein?

A Yes, I do.

Q What are those records?

A Well, it was my practice and still is my practice to make contemporaneous memos of any phone conversations which I had and place them into relevant files, and I did so at that time with that conversation.

Q Did you bring that file memo with you today?

A Yes, I did.

MR. PETERS: I would like to ask the reporter to mark this as Plaintiff's Exhibit A.

(Whereupon, Plaintiff's Deposition Exhibits A, B and C were marked for identification by the reporter.)

Q (By Mr. Peters) Mr. Johnson, I show you what has been marked for identification as Plaintiff's Exhibit A and ask if you can identify it?

A Yes, I can.

Q What is it?

A This is my memorandum to my files which I executed

PLAINTIFF'S EXHIBIT 15

at the time that I talked to Mr. Burstein.

MR. PETERS: At this time I would request that the court reporter attach this to his transcript.

MR. CAPLAN: I think it is appropriate at this time to raise any objections we have. I would object to the admission of the document marked as Plaintiff's Exhibit A first on the grounds that it appears to be self-serving and, secondly, on the ground of hearsay and possible application of the Deadman's statute as it exists in the state of Connecticut as has been previously mentioned.

MR. HAFFEY: I would join in those objections.

Q (By Mr. Peters) As a result of that conversation with Mr. Burstein what, if anything, did you do?

A Well, the next thing that I did was I set down and dictated a letter to Michael Holodnak and in that letter I told him that I talked to Burstein and Burstein had accepted my offer of assistance; that he would be talking with Booth in a few days and would get back to me.

Q Did you make a copy of that letter for your file?

A Yes. It was my practice to put a carbon copy of all correspondence in the relavant file and I did in this case.

Q Did you bring that copy with you today?

A Yes, I did.

Q Mr. Johnson, I show you what has been marked

PLAINTIFF'S EXHIBIT 15

Plaintiff's Deposition Exhibit B for identification and ask if you can identify it.

A Yes, I can.

Q What is it?

A This my file copy of the letter which I sent to Mike Holodnak and it's dated July 14th, 1969, and sent to him at his address, 38 Morris Lane, Milford, Connecticut 06460.

Q Now, on the date, the letter is dated July 14th; is that correct?

A This letter, this carbon copy of the letter, is dated July 14th.

Q In that letter you refer to the fact that you had spoken to Mr. Burstein yesterday, a date which your memo, Plaintiff's Deposition Exhibit A, fixes as July the 8th. Can you explain that discrepancy?

A Yes.

Q Explain it.

A At that time, as I said, I was a sole practioner and I had just started out on my own. I had a part-time secretary who came in at my request, whenever I could afford her and whenever she was necessary. It was my practice at that time to dictate correspondence as it came up into a dictating machine, a Stenorette, S-T-E-N-O-R-E-T-T-E, and when the tape was full I would call my secretary and at her convenience she would come in and transcribe whatever

PLAINTIFF'S EXHIBIT 15

dictation was on the tape. That must be what happened here, the letter was dictated on the 9th and my secretary finally got around to transcribing it on the 14th.

MR. PETERS: At this time we'll offer Plaintiff's Deposition Exhibit B to the reporter to be attached to his transcript.

MR. CAPLAN: I'll object to the admission of Plaintiff's Deposition Exhibit B for the reasons that it appears to be self-serving, hearsay, and maybe in violation of the Deadman's statute or similar rule of evidence as it applies.

MR. HAFFEY: I would join in that objection.

Q (By Mr. Peters) What was your next contact with the case?

A Well, the next thing I recall was that I got a call from Mike Holodnak who told me that the arbitration hearing was sceduled a day or two hence.

MR. CAPLAN: Object. I'll object to any conversation with Mr. Holodnak to Mr. Johnson on the ground of hearsay.

Q (By Mr. Peters) What, if anything, did you do then?

A I attempted to call attorney Burstein, the same way, I looked up his number and I actually had it in my original memorandum to the files. I left a message with the

PLAINTIFF'S EXHIBIT 15

secretary for him to get back to me and he never did so.

Q Did you attend the arbitration hearing?

A No, I didn't.

Q Why didn't you?

A Well, it was my understanding of the law that the Union had to be given an opportunity to represent the employee through the contract grievance machinery and Burstein was the union counsel, he had accepted my offer of help and apparently decided to not avail himself of that so there was nothing I could do.

Q Did you ever hear again from Mr. Burstein regarding your offer of assistance in the Holodnak case?

A No. I did send him the letter after I learned that the arbitration had been unfavorable to Mr. Holodnak but he never contacted me, never answered my phone calls or anything of the sort.

Q Did you make a copy of that letter for your files?

A Yes, it was my practice, and I did so in that case.

Q Mr. Johnson, I show you what has been marked Plaintiff's Deposition Exhibit C for identification, can you identify it?

A Yes, this is my carbon copy of the letter which I sent to Burstein dated October 29th; reference Michael Holodnak, and asks that he communicate with me about the case

PLAINTIFF'S EXHIBIT 15

Q Did he ever respond to that letter?

A No, never did.

Q What is the year of the letter?

A 1969. October 29, 1969, sent to Edward Burstein, Esquire, 177 State Street, Bridgeport, Connecticut.

MR. PETERS: At this time I'll offer this letter to the reporter and ask it be attached to the transcript in this case as Plaintiff's Deposition Exhibit C.

MR. CAPLAN: Object to the admission of the document designated as Plaintiff's Deposition Exhibit C on the grounds of hearsay, self-serving and possible violation of the Deadman's statute or similar rule of evidence applicable.

MR. HAFFEY: I would join in the objection.

Q (By Mr. Peters) Do you believe your assistance would have enhanced Burstein's capacity?

A Yes, I do.

Q In what way?

A Well, Mr. Burstein was a labor lawyer and I believe that there were very difficult and complicated First Amendment issues present in this case in addition to any labor laws or issues and I have done a lot of work in the First Amendment area and I believe that a good deal of research and drafting needed to be done to make an effective presentation to the arbitrator.

PLAINTIFF'S EXHIBIT 15

Q Did you make any other inquiries to Mr. Burstein as to whether or not he would accept your offer of assistance, besides the letter you testified to?

A Well, I made the initial offer which he accepted and then I waited for him to get in touch with me, which he never did. When I learned the arbitration was scheduled, as I testified, I called him and tried to get in touch with him and there was no answer. When I learned that the arbitration had been unsuccessful I tried to call him again and sent him the letter which previously has gone into evidence. Other than that I can't think of any other requests made by me.

MR. PETERS: I have no further questions at this time.

EXAMINATION

BY MR. CAPLAN:

Q Mr. Johnson, you were the attorney for Mr. Holodnak at the time of the filing of this action in the Federal District Court for the District of Connecticut; is that correct?

A That's correct.

Q When did you become his attorney?

A Well, shortly prior to that.

Q Can you give me a date?

A I'm sorry, I can't. I think a date exists but,

PLAINTIFF'S EXHIBIT 15

obviously, my files are with Mr. Sosnoff in Connecticut referring to this case. I do have a signed authorization by Mr. Holodnak which I believe will be dated, and if I could refer to that I could give you the exact date.

Q Maybe I can help you. Mr. Johnson, I have a copy of the Complaint which appears to be dated February 18th 1970.

A Could I see a copy? Why don't I take this copy?

MR. HAFFEY: I believe this is it.

A (By the Deponent) What page are you referring to?

Q (By Mr. Caplan) First page.

A Go ahead.

Q Well, that appears to have a date of February 18, 1970. I'm asking you if that approximately was the time you became the attorney for Mr. Holodnak?

A Well, this is the Federal District Court summons that you're asking me to look at; is that correct?

Q I'm asking you to refresh your memory.

A Yeah. I think it would be sometime prior to February 18th, shortly prior to that. I obviously talked to Mr. Holodnak before I filed the action and I'm sure his authorization was dated before February 18th.

Q Would it be a fair statement that at that time you conferred with Mr. Holodnak on July 14, 1969, and you were not acting in the relationship of his attorney?

PLAINTIFF'S EXHIBIT 15

A That's correct.

Q How did you know Mr. Holodnak?

A Well, he had been -- he had written the article for the AIM Newsletter. I didn't know him except through that relationship. People on the AIM Newsletter knew him much better than I did.

Q Did you have a social acquaintanceship with him prior to the time that you wrote the letter of July 14, 1969?

A No. I don't think that I had ever seen him in person at that time. I think our conversation, if any, had been by phone and my major connection with this incident up to that time had been with members of the AIM Newsletter and not with Mr. Holodnak. It was as a result of their concern that I offered my assistance to Ed Burstein.

Q Mr. Johnson, do you have any other memorandum in your file concerning any proported or alleged contacts with Mr. Burstein other than the one that's been marked as an exhibit?

A It should be noted I don't have my files here with me but I can swear that there is no other memorandum which concerns any phone calls to Burstein. There was some correspondence with him and probably some phone calls after this suit was filed but prior to the filing of this suit these are the only phone calls and they're the only memorandums in the file. I'm sure I wrote him several times

PLAINTIFF'S EXHIBIT 15

requesting that he file an answer, which he failed to do. I'm sure I called him and reported the calls in that regard.

Q Where is that file?

A That's with Mr. Sosnoff in New Haven.

MR. CAPLAN: I might indicate for the record that my questions are not intended in any way to reserve the objections, to jeopardize the objections previously made.

Q (By Mr. Caplan) Did you receive any reimbursement for any expenses that you may have incurred on behalf of Mr. Holodnak prior to the time you assigned your interest in the case to Mr. Sosnoff?

A Repeat the question.

MR. CAPLAN: (Addressing the reporter) Would you read that back.

(Whereupon, the foregoing question was read back by the reporter.)

A (By the Deponent) I can't remember the exact financial details. I'm sure I received the filing fee from him at the time and, as I recall, the service had to be made by a special officer appointed by the Court for service because the sheriff was not available to serve civil complaints at that time in the District of Connecticut and I believe the service was done for free. So, the only expenses incurred would be the $15 filing fee and, again, I don't have my financial records here but I think that I did receive that

PLAINTIFF'S EXHIBIT 15

from Mr. Holodnak.

Q Mr. Johnson, do you know whether or not a transcript of the arbitration proceedings was prepared?

A Yes, I do know that there was one prepared.

Q Have you ever read the transcript?

A I have read the transcript.

MR. CAPLAN: I have no further questions.

MR. HAFFEY: I have just one.

EXAMINATION

BY MR. HAFFEY:

Q Mr. Johnson, have you discussed the substance of your testimony today with Mr. Peters before coming to the deposition?

A Yes, I have.

Q Have you seen a copy of the questions that he's asked you before the deposition?

A Yes, I have.

MR. HAFFEY: I have no further questions.

EXAMINATION

BY MR. CAPLAN:

Q What is your association with Mr. Peters, Mr. Johnson?

A He's a colleague of mine. We're both Staff Attorneys and both Assistant Directors of the Legal Aid and Defender Program.

PLAINTIFF'S EXHIBIT 15

MR. CAPLAN: Nothing further.

MR. PETERS: I have no further questions.

(Whereupon, at 2:00 p.m. the deposition was concluded and further the deponent sayeth naught.)

I, GEORGE A. JOHNSON, do hereby certify that I have read the above and foregoing deposition, and that the same is a full and true record of my testimony therein.

GEORGE A. JOHNSON

Subscribed and sworn to before me this_____ day of_____, 1973.

My Commission Expires:_____

Notary Public

PLAINTIFF'S EXHIBIT 15

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

REPORTER'S CERTIFICATE

I, Gary Blando, Notary Public and Certified Shorthand Reporter within and for the State of Colorado, do hereby certify:

That the deponent herein was sworn to state the truth, the whole truth and nothing but the truth, and subsequently examined as herein set forth;

That the foregoing testimony was taken by me in stenotype and thereafter reduced to typewriting under my supervision, and that the same is a true and correct transcript of the testimony of said deponent;

That I am not related or in any wise associated with any of the parties to said cause of action, or their counsel, and that I am not interested in the event thereof.

IN WITNESS WHEREOF, I have set my hand this 23rd day of March, 1973.

My Commission expires August 29, 1973.

GARY BLANDO, C.S.R.

PLAINTIFF'S EXHIBIT 15

Memo

TO: Holodnak file
DATE: 7/2/69
Re: Phone conv with Ed Burkin.
121 State
Bridgeport, Conn
335-606

He will let me know when the arbitration is coming up, so I can submit whatever material will be helpful.

3/16/73 PLAINTIFF'S DEPOSITION EXH. A
98

PLAINTIFF'S EXHIBIT 15

July 14, 1969

Micheal F. Holodnak
38 Morris Lane
Milford, Conn. 06460

Dear Mike,

Yesterday I talked to Ed Busstein, who is general counsel for the union there at AVCO. He told me that he had not yet taken a look at your file, but that he was going to meet this very afternoon with Russ Booth, and that he would go over the file with Russ and make a determination at that time. I told him that I was very concerned about your welfare, and that I would be glad to help him with your arbitration, if he so desired. He thanked me very much, and told me that he would gladly accept any help that you and I thought appropriate. He will contact me, and let me know what he thinks about the case. When he does, I will let you know.

Sincerely yours,

George A. Johnson

GAJ:sw

3/14/75 PLAINTIFF'S DEPOSITION EXH. B.
98

PLAINTIFF'S EXHIBIT 15

October 29, 1969

Edward Burstein, Esq.
177 State Street
Bridgeport, Connecticut

Ref: Michael Holodnak

Dear Mr. Burstein,

You will recall our own conversation of July 8, 1969, concerning the above worker at AVCO. At that time I volunteered to do whatever research and aid you in whatever way you desired so that you could best present the First Amendment aspects of Mr. Holodnak's grievance. Mr. Holodnak tells me that the matter has been resolved unfavorably to him. May I request that you communicate with me, and bring me up to date in this matter?

Sincerely yours,

3/14/77 PLAINTIFF'S DEPOSITION EXH. C
9B

George A. Johnson

589a

DEFENDANT AVCO'S EXHIBIT A.

AVCO LYCOMING DIVISION

AVOID VERBAL ORDERS

At 100

LABOR RELATIONS	DEPT. NO	DATE
		4/9/69

WARNING #1

This is to notify you that Warning #1 issued on December 6, 1968 to Michael Holodnak, Dept. 310, Clock #2838 is hereby rescinded.

This action is being taken without precedent or prejudicing the company's position in this or any other matter.

CC:
Personnel
Works Manager
Superintendent
Foreman
Employee
Union

310 WA

G. Parmaley

G. Parmaley - General Foreman

DEPT. NO	EXT.
100	714

REPLY

	SIGNED	DATE

RECIPIENT: RETAIN WHITE COPY, RETURN PINK COPY

590a

DEFENDANT AVCO'S EXHIBIT A

AVCO LYCOMING DIVISION

DISCIPLINARY WARNING

WARNING NO. 1

E: MICHAEL HOLODNAK

BADGE NO. 2838

ARTMENT: 31Q

DATE: December 6, 1968

TEMENT

On December 4th, 1968, you were informed by Foreman Tennis that you have been clocking in and out at a clock other than the one assigned to 31Q. You were previously warned that this procedure would not be condoned by your Foreman and General Foreman.

You flatly refused to carry out these instructions and proceeded to clock out at Final Assembly. At a hearing in Labor Relations, after lengthy discussion and information as to proper procedure, you were informed that your conduct during this incident bordered on insubordination in that you neglected to fallow the Foreman's instructions.

COMMENDATION

Any re-occurance of this type conduct would or could result in your termination.

UPERVISOR: Orbie R. Tennis | DATE: 12-6-68 | DEPARTMENT: 31Q

DISCIPLINARY WARNINGS ARE INTENDED TO ACHIEVE SELF DISCIPLINE, THEREBY AVOIDING MORE SEVERE ACTION INCLUDING DISCHARGE. COOPERATE WITH YOUR COMPANY AND YOUR FELLOW WORKERS IN COMPLYING WITH COMPANY RULES.

L 716

PERSONNEL RECORDS

DEFENDANT AVCO'S EXHIBIT A

PER-20

SUPERVISOR'S REPORT

ame MICHAEL HOLODNAK Clock No. 2838

epartment 4Y Date June 14, 1963

ommendation ☐ Warning ☒ Warning No. 1

atement:

On Thursday, June 13, 1963, you left the plant without permission, this is a direct violation of company rule #29.

After requesting permission to go to medical, you returned and were seen punching out your card at 11:00 A.M. by me. When asked if you had permission by medical to leave, you daid, "Yes, the medical pass is on your desk". On my desk was an A.V.O., and medical slip stating that you were able to work, and limiting you to fifty pounds weight.

Recurrence of violation of company rules, will result in more severe disciplinary action.

onnel
Manager
intendent
man
eyee
ion

Signed [signature]
FOREMAN

Approved [signature]

592a

DEFENDANT AVCO'S EXHIBIT A

PER-20

SUPERVISOR'S REPORT

Name MICHAEL HOLODNAK Clock No. 2838

Department 4Y Date July 2, 1963

Commendation ☐ Warning ☒ Warning No. 1

Statement:

On Monday, July 1, 1963, you were given part #1-130-020-11 Combustor Housing, Serial # T-225 to perform a drilling operation.

Due to your carelessness, you drilled .213 dia. hole into the 1-130-072-02 Boss approximately .325 deep causing the part to become scrap.

Such carelessness causes a unnecessary delay in meeting delivery of shop schedules.

Recommendation:

Recurrence of carelessness of this type, will result in more severe disciplinary action.

rsonnel
rks Manager
perintendent
remen
ployee
nion

Signed [signature]
FOREMAN

Approved

DEFENDANT AVCO'S EXHIBIT A

PER-20 A

SUPERVISOR'S REPORT

Name M. Holodnak Clock No. 2838

Department 41L Date 1/22/62

Commendation ☐ Warning ☒ Warning No. 2

Statement: On Friday, January 19, 1962, you were observed reading at your work station by your foreman. Later that same evening you were away from your assigned work area for approximately twenty minutes. In checking your whereabouts your foreman and another member of supervision found you reading in the men's room.

You received a written warning for this same violation of company rules on July 19, 1961. Your actions in this matter represent a waste of company time which will not be tolerated.

Recommendation: You are to be suspended without pay for three days effective January 24, 25 and 26, 1962.

sonnel ✓
s Manager
rintendent
man
oyee
n

Signed _____ FOREMAN

Approved _____

DEFENDANT AVCO'S EXHIBIT A

PER-20 A

SUPERVISOR'S REPORT

Name Michael Holodnak Clock No. 2838

Department 41L Date 1/16/62

Commendation ☐ Warning ☒ Warning No. 1 ✓

Statement: You have been advised of the standards of your work which have been certified by our Manufacturing Standards Department, and which an average operator should easily exceed as they are minimum standards. After several verbal warnings you have continued to fail to meet these minimum standards. During the past week your production has been as follows:

Date	Part Number	Operation No.	Standard Per Piece	No. of Pcs. Completed	Hours Worked	% of Standard
1/3/62	305529-1	220	60.00 SU	0	8.0	11
1/9/62	305529-1 ✓	220	12.200	12	8.0	30
1/10/62	305529-1 ✓	220	12.200	6	3.0	25
	305529-1	230	60.00 SU	0	4.0	25
	305529-1 ✓	230	20.000	1	1.0	33
1/11/62	305529-1 ✓	230	20.00	13	8.0	53
1/12/62	305529-1	20	90.00 SU	0	1.5	Incomplete
	307612-1 ✓	20	90.00 SU	0	6.5	23

Recommendation: If you continue to fail to meet your minimum production standards more severe disciplinary action will be taken.

Personnel ✓
Works Manager
Superintendent
Foreman
Employee
Union

ok
items only

Signed [signature] FOREMAN

Approved [signature]

DEFENDANT AVCO'S EXHIBIT A

PER-20 A

SUPERVISOR'S REPORT

me M. Holodnak Clock No. 2838

partment 41L Date 4/5/61

mmendation ☐ Warning ☒ Warning No. 1

tement: While working on part #305033-5 - operation #60 you violated Company rules by entering on your daily work sheets and I. B. M. cards more pieces of work then you completed.

n 3/29/61 - you entered - 21 pieces - but only completed - 14 pieces

n 3/30/61 - you entered - 21 pieces - but only completed - 12 pieces

n 4/3/61 - you entered - 20 pieces - but only completed - 12 pieces

n 4/4/61 - you entered - 20 pieces - but only completed - 12 pieces

his is falsification of Company records, and is cause for your immediate termination. At our termination hearing held on 4/5/61, due to special circumstances, your supervision greed to reduce your termination to a suspension of 7 days.

commendation: Seven (7) days suspension starting 4/6/61 - returning to work 4/17/61 regular work shift. Any [redacted] recurrence will result in your immediate termination.

onnel
s Manager
rintendent
ugh
ugee
n

Signed [redacted]

Approved [redacted]

596a

DEFENDANT AVCO'S EXHIBIT A

PER 20 A

SUPERVISOR'S REPORT

Name M. Holodnak Clock No. 2838

Department 41L Date 7/19/61

Commendation ☐ Warning ☒ Warning No. 1

Statement: On 7/13/61 you were observed in the men's room in the 3-D area, reading a book. On 7/13/61 you were verbally warned that this was a violation of Company rules.

Recommendation: Any recurrence of this violation will result in more severe disciplinary action.

Personnel
Works Manager
Superintendent
Foreman
Employee
Union

Signed [signature] FOREMAN

Approved [signature]

DEFENDANT AVCO'S EXHIBIT B.

(pages 1 through 7)

In the Matter of the Arbitration Proceeding - between - AVCO LYCOMING DIVISION (STRATFORD PLANT) AVCO CORPORATION - and - LOCAL #1010, UAW-AFL-CIO	CEASE AND DESIST ORDER AND AWARD

CEASE AND DESIST ORDER AND AWARD

It appearing, from the accurate reliable proof adduced in this proceeding, that a wildcat strike or work stoppage, which has been publicly disavowed by the Union as an unauthorized work stoppage in violation of the contract, may, nonetheless, in all reasonable probability, be continued by the employees involved therein, despite such action of the Union,

Now, therefore, the undersigned, as the duly constituted contract Arbitrator, upon application of the Company and the consent of the Union, hereby orders and directs as follows:

1. That all members of the Union cease and desist from violation of the no-strike provisions of the Labor Agreement of the parties, and/or violation of the Arbitrator's Award of November 4, 1967, and cease and desist from participating in, either directly or indirectly, and/or aiding or abetting, by picketing or otherwise, any such work stoppage; and

2. That all members of the Union forthwith return to work as scheduled and remain at work during their scheduled work shifts.

Burton B. Turkus, Arbitrator

Dated: June 21, 1968
Stratford, Connecticut

Subscribed and sworn to before me this 21st day of June, 1968.

Evelyn Post Lyman, Notary Public

DEFENDANT AVCO'S EXHIBIT B

NO. 134878

AVCO LYCOMING DIVISION
(STRATFORD PLANT)
AVCO CORPORATION * SUPERIOR COURT

VS. * FAIRFIELD COUNTY
(AT BRIDGEPORT)

INTERNATIONAL UNION, UNITED
AUTOMOBILE AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, (UAW-AFL-CIO)
AND LOCAL 1010 * DECEMBER 10, 1968

ORDER RE APPLICATION FOR CONFIRMATION OF ARBITRATOR'S AWARDS

In the above entitled case it is hereby ordered that the AWARDS be confirmed and enforced in accordance with their terms and in all respects and said AWARDS are incorporated herein by reference. (Copies of said AWARDS are annexed hereto).

BY THE COURT

s/ Michael Radin, J.

DEFENDANT AVCO'S EXHIBIT B

In the Matter of the Arbitration	:
- between -	:
AVCO LYCOMING DIVISION (STRATFORD PLANT) AVCO CORPORATION	: AWARD
- and -	:
INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-AFL-CIO) AND LOCAL 1010	:

The undersigned, as the duly designated contract arbitrator, in conformity with the stipulation of the parties set forth and incorporated in the stenographic record of the proceedings of November 30, 1967 in connection with the occurrences of November 3 and November 14, 1967 as therein more fully set forth, hereby decides, determines and renders the following opinion and

A W A R D :

No Company, despite its stature and reputation, may providently ignore the inexorable law of economics that growth and even survival itself in a free and competitive economy are dependent upon achieving and continuing efficiency in its operations. It is imperative, therefore, that all concerned, employees as well as Company and Union, understand that the no-strike provision of the labor agreement is a solemn compact which outlaws strikes of any kind, stoppages or any other interference with any of the operations of the Company during the term of the Agreement.

Breach or violation of the no-strike provision of the Agreement cannot be tolerated nor condoned. Indeed, it is difficult to envision any action or activity more likely to reduce a labor agreement to a worthless scrap of paper, to irreparably

impair the parties' relationship, and more inimical to the economic best interests of Company, Union and workers alike, than indulgence in its violation.

Effective grievance machinery is provided for the prompt and objective determination of any and all grievances. This, through the stipulation of the Union and of the Company, means that if there is any grievance reaching a point where it creates an emergency situation or where the best interests of all concerned entail that it be heard with promptness and dispatch, the Arbitrator will be here to hear and dispose of matters of such nature on short notice and with all possible dispatch.

Thus, any possible excuse or pretext of the need to resort to strike action, work stoppage or other interference with the Company operations over a grievance is completely eliminated, and such action is revealed for what it is, a reprehensible endeavor to bypass and circumvent the Grievance and Arbitration Procedures of the Agreement for the sole purpose of winning a grievance or extracting an advantage at plant level through contract violation.

From a practical standpoint the trouble-makers, hotheads and inciters of work stoppages thereby actually furnish an unmistakable signal of a conscious awareness of the weakness and the lack of faith in the grievance itself as to require resort to job action in violation of the contract rather than to the agreed Grievance and Arbitration Procedures of the Labor Agreement.

Aside from the illegality thereof and the financial loss suffered by all concerned, it is manifest that those who

incite, precipitate, take leading roles in or even participate in the proscribed strike action may well expose themselves to stern disciplinary action including discharge and, in certain instances, to subject the Union itself to the assessment of damages to reimburse the Company for the losses sustained in consequence of the breach or violation of the no-strike provision of the Contract.

In return for the concessions made to the Union in Collective Bargaining, the employer secures one concession that is basic to its security, as well as to the security of the men in its employ. This is the pledge that during the term of the Agreement work will be continued without interruption by either strikes or lockouts so that the Company will continue to produce and the men to earn, to their mutual benefit.

Whoever on the Union's side subverts this no-strike commitment by instigating, leading, condoning or even participatin in a wildcat strike attacks the fundamental basis of collective bargaining. He defies that which the Union has set out to achieve a fair agreement to cover the terms of employment. He dishonors the pledged word of his Union leadership and despoils the efforts of those who preceded him in erecting the structure of industrial relations which has replaced the jungle warfare of an earlier day.

Because he strikes so devastating a blow at the basic aims of both the Management and his own Union, such a person merits a measure of discipline as severe as any that can be administered for an offense under the industrial code and the labor agreement. While the penalty should be graded to the degree of

DEFENDANT AVCO'S EXHIBIT B

involvement and intensity of participation, it should properly be severe enough to impress on the leader and on others that the leaders of a wildcat strike basically engage in an anti-Union as well as an anti-Management act.

Union leadership - and I mean Union officials - have an especial responsibility to honor the pledged word of the Union to abide by the agreement's constraints in exchange for garnering its benefits. Union officials on any level, in return for the satisfactions of leadership in the position which they hold of leadership in the Union, the sense of power, the rewards of personal satisfaction, and the advantages, if any, of the office, must accept the responsibilities as well. At the very least, those include the obligation to refrain from promoting, encouraging or condoning an illegal walkout. Affirmatively and to the utmost, it means that they must do everything within their power to prevent a work stoppage or wildcat strike from ensuing before it begins. They must, if such an occurrence takes place, make a determined effort not only to prevent it before it began, but also to promptly end it and to set an example by leading the men back to work; to refrain from being on a picket line or in any way, overtly or covertly, encourage any participation in such illegal action or that it is meeting with either the outward or surreptitious approval of any Union official on any level.

It is expected that the Company will cooperate in implementing the demonstrated intent of responsible incumbent Union officers to live by the contract rather than by the reprehensible, irresponsible and contractually proscribed procedure of the predecessor regime.

DEFENDANT AVCO'S EXHIBIT B

All Union officials on all levels by virtue of this award (dictated to the stenographer in their presence and hearing) have been placed on notice of their rights and of their obligations and responsibilities in connection with an unauthorized work stoppage or wildcat strike. It has been made clear to all, and even to rank and file members that participation in such action will lead to stern disciplinary action, including discharge. All Union officials on all levels will be held to strict account of their obligations and duties as outlined in this award.

Although it may be needless repetition, I am hereby directing that there must be obedience of the no-strike, no-lockout provisions of the Contract by both sides. I further direct the attention of all concerned that implicit in this award is a direction to all rank and file Union members and officials to cease and desist in the future from any violation of the no-strike provision of the contract.

Dated: Stratford, Connecticut
November 30, 1967

Burton B. Turkus, Arbitrator

STATE OF CONNECTICUT)
: ss.:
COUNTY OF FAIRFIELD)

On this 30th day of November, 1967 before me personally came and appeared BURTON B. TURKUS, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

Notary Public

DEFENDANT AVCO'S EXHIBIT E.

(pages 2-3, 9 through 24)

OPERATIONS PRODUCTS AND SERVICES

FINANCIAL SERVICES

INSURANCE

THE PAUL REVERE LIFE INSURANCE COMPANY
WORCESTER, MASSACHUSETTS

Noncancellable and guaranteed renewable accident and health insurance—all forms of life insurance and fixed dollar annuities—group insurance.

THE PAUL REVERE VARIABLE ANNUITY INSURANCE COMPANY
WORCESTER, MASSACHUSETTS

Individual and group variable annuities.

THE PAUL REVERE COURIER FUND, INC.
WORCESTER, MASSACHUSETTS

Mutual fund.

Manager: The Paul Revere Equity Management Company

Distributor: The Paul Revere Equity Sales Company

CONSUMER FINANCE

AVCO DELTA CORPORATION AND SUBSIDIARIES
NEW YORK, NEW YORK; VARIOUS LOCATIONS IN THE UNITED STATES AND CANADA

Consumer loans—retail installment sales financing—commercial and industrial financing—industrial banking—real estate and home improvement financing—insurance.

SEABOARD FINANCE COMPANY AND SUBSIDIARIES
LOS ANGELES, CALIFORNIA; VARIOUS LOCATIONS IN THE UNITED STATES, CANADA AND AUSTRALIA

Consumer loans—retail installment sales financing—real estate financing—insurance.

OTHER FINANCE OPERATIONS

AVCO SAVINGS AND LOAN ASSOCIATION
LOS ANGELES, VENTURA AND ORANGE COUNTIES, CALIFORNIA

Savings accounts—real property financing—educational and home improvement loans.

Coastline Mortgage Corporation
Ventura, California

CARTE BLANCHE CORPORATION
LOS ANGELES, CALIFORNIA

Credit card facilities—direct mail and catalog sales of merchandise—travel services.

Cartan Travel Bureau, Inc.
Chicago, Illinois

DEFENDANT AVCO'S EXHIBIT E.

RECREATION AND LAND DEVELOPMENT

AVCO BROADCASTING CORPORATION
CINCINNATI, OHIO

VHF television stations—WLWT: Cincinnati, Ohio • WLWC: Columbus, Ohio • WLWD: Dayton, Ohio • WLWI: Indianapolis, Indiana • WOAI-TV: San Antonio, Texas.

Radio Stations—WLW: Cincinnati, Ohio • WOAI: San Antonio, Texas • WWDC-AM-FM: Washington, D. C. • KYA and KOIT (FM): San Francisco, California • WRTH: Wood River, Illinois.

Avco Radio Television Sales, Inc.
New York, New York

AVCO COMMUNITY DEVELOPERS, INC.
SAN DIEGO, CALIFORNIA

Residential, commercial, recreational and industrial land development.

Avland Development Company
Newport Beach, California

AVCO EMBASSY PICTURES CORP.
NEW YORK, NEW YORK; VARIOUS LOCATIONS IN THE UNITED STATES AND ABROAD

Worldwide motion picture production and distribution—theater operations—television sales—music publishing—records.

PRODUCTS AND RESEARCH

AVCO AEROSTRUCTURES DIVISION
NASHVILLE, TENNESSEE

Structures and assemblies for aircraft and helicopters—ballistic missile cases and space vehicle cold plates—engineering design and development programs—metal office furniture manufactured under contract.

AVCO BAY STATE ABRASIVES DIVISION AND SUBSIDIARIES
WESTBORO, MASSACHUSETTS; TORRANCE, CALIFORNIA; BRANTFORD, ONTARIO, CANADA; STEINSEL, LUXEMBOURG

Vitrified and resin bonded grinding wheels and segments—honing stones—abrasive cutoff blades—diamond grinding wheels and cutoff blades—open-mesh coated abrasive cloth—plasma spray coatings and equipment.

AVCO ECONOMIC SYSTEMS CORPORATION
WASHINGTON, D.C.; BOSTON, MASSACHUSETTS; GLASGOW, MONTANA; SAN ANTONIO, TEXAS

Educational and training services—full service printing and publishing—operation and maintenance of self-contained communities.

AVCO ELECTRONICS DIVISION
CINCINNATI, OHIO; HUNTSVILLE, ALABAMA; TULSA, OKLAHOMA

Tactical communications, space electronics and radar systems—infrared systems—worldwide field engineering services—commercial electronics products—specialized instrumentation—information systems—travel trailers and motor homes.

AVCO EVERETT RESEARCH LABORATORY
EVERETT AND HAVERHILL, MASSACHUSETTS

High power gas lasers—reentry physics—strategic defense systems—plasma dynamics—magnetohydrodynamic (MHD) power generation—superconductive devices—biomedical engineering and cardiac-assist devices.

AVCO LYCOMING DIVISION
STRATFORD, CONNECTICUT; CHARLESTON, SOUTH CAROLINA

Aircraft, marine and industrial gas turbine engines—engine components—missile reentry vehicles and structural components—rocket motor cases—fuel and oxidizer tanks—ground support equipment—constant speed transmissions—aircraft mechanical controls—water and air dynamometers—torque measuring systems—engine testing equipment.

AVCO LYCOMING DIVISION
WILLIAMSPORT, PENNSYLVANIA

Reciprocating engines for fixed wing aircraft and helicopters—engine components—hardened and ground precision parts—landing gears—Avco Spencer heating boilers—industrial diesel and gasoline engines.

AVCO NEW IDEA FARM EQUIPMENT DIVISION
COLDWATER, OHIO; FORT DODGE, IOWA

Uni-System line of self-propelled interchangeable farm equipment—corn pickers, snappers, picker-shellers, picker-grinders—manure and fertilizer spreaders—farmstead equipment—hydraulic loaders and attachments—shredders, rotary cutters, mowers, hay conditioners, Mow/ditioners, Cut/ditioners, parallel bar rakes, wheel rakes.

AVCO ORDNANCE DIVISION
RICHMOND, INDIANA

Design and production of mechanical, electro-mechanical and electronic elements of ammunition and warheads—weapon system fuzing—tactical weapons and other ordnance items.

AVCO SYSTEMS DIVISION
WILMINGTON AND LOWELL, MASSACHUSETTS

Operational ICBM reentry systems and penetration aids—ABM target vehicles—scientific satellites—planetary probes—laser and optical systems—Apollo and missile heat shields—armor materials—advanced materials research and development—aerophysics research and testing—information technology systems.

AVCO THOMPSON STEEL DIVISION
BOSTON, MASSACHUSETTS; BALTIMORE, MARYLAND; FRANKLIN PARK, ILLINOIS; WORCESTER, MASSACHUSETTS

Cold rolled strip steel—annealed high carbon steel—tempered spring steel—alloy strip steel—brush wire—staple wire—high carbon spring wire—bright and liquor finished fine wire specialties.

MOFFATS LIMITED
WESTON AND ORILLIA, ONTARIO, CANADA

Gas and electric free-standing, cabinet and built-in ranges—refrigerators and dishwashers—clothes washers and dryers—commercial cooking and food service equipment—range heating elements.

DEFENDANT AVCO'S EXHIBIT E

AVCO CORPORATION

REPORT OF THE CHAIRMAN AND PRESIDENT

To the Stockholders of Avco Corporation:

Although Avco's 1969 earnings were lower than those of the prior year, your company made significant progress during the year in positioning itself to meet the urgent domestic requirements foreseen for the nation in the coming decade.

Consolidated net earnings of Avco were $51,447,000, or $3.12 per outstanding common share, for the fiscal year ended November 30, 1969. In 1968 consolidated earnings were $57,022,000, or $3.76 per common share. Net earnings for 1969 include earnings of Seaboard Finance Company since its acquisition on January 21, 1969, amounting to $6,230,000, or 55 cents per share, after deducting interest on Avco's debentures issued in the acquisition.

Earnings per common share, assuming conversion of all convertible securities, were $2.33 for 1969, compared with $2.69 for 1968, and on this basis, the inclusion of Seaboard accounted for 22 cents per share in 1969. The Financial Review, at page 11, sets forth additional details as to Avco's earnings.

Several years ago, your management decided to change Avco from a defense oriented company to a predominantly commercial one. This objective has been accomplished. In 1964, less than half of Avco's earnings resulted from commercial sales while in 1969, commercial operations accounted for approximately 85 percent of Avco's earnings. This change resulted both from internal growth and from carefully planned acquisitions in attractive commercial areas.

Although short term predictions of economists vary, there is substantial agreement on the character and magnitude of expansion in the national economy which lies ahead. Real income is expected to gain 50 percent over the next decade, providing a market for personal goods and services approximating one trillion dollars yearly among a population that will increase by 27 million persons. The decade is expected to be marked by widespread development of raw land and a doubling of residential construction. Personal finance and insurance needs will greatly expand with increased family formations, and the market for leisure time products and services will continue its sharp upward trend, reflecting higher individual incomes and shorter working hours.

Avco's stake in each of these important markets increased last year.

The acquisition of Seaboard Finance Company approximately doubled Avco's representation in the consumer finance business. Plans are now being made to consolidate all of Avco's consumer finance operations under the name Avco Financial Services, with more than 1,600 offices in the United States, Canada and Australia. Shortly after the end of the year, Avco increased to 91 percent its ownership in Carte Blanche

DEFENDANT AVCO'S EXHIBIT E

Corporation, the worldwide travel and entertainment credit card company.

Avco greatly expanded its land development business in 1969 by acquiring a 90 percent interest in Avco Community Developers, Inc., formerly known as Rancho Bernardo, Inc. Subject to federal and state registration requirements, this subsidiary is planning to acquire another California land development company, Laguna Niguel Corporation, within the next few months. Avco has also formed a new subsidiary, Avland Development Company, to engage in the business of selling resort and vacation properties.

An additional major acquisition, completed in December 1969, was Huntington Savings and Loan Association which was merged with Avco's Ventura Savings and Loan Association to form Avco Savings and Loan Association. Most of the assets of this California subsidiary consist of mortgage loans, and its growth is expected to parallel the increase in new housing forecast during the seventies.

Avco Embassy Pictures diversified its operations in 1969 by entering the record business, and Avco Broadcasting expanded its outlets by acquiring WRTH, Wood River, Illinois, an AM radio station serving the greater St. Louis area.

Avco's 1969 results reflect the effect of a number of different factors. Since our operations, especially in the consumer finance area, entail the borrowing of large sums of money, the past year's very high interest rates had a significantly adverse effect on earnings. Realized capital gains in the insurance and finance operations were substantially lower than in 1968. The amount of Avco's film rentals also declined significantly in 1969 from the level achieved in 1968 with the box office success of "The Graduate."

Operations in the commercial and industrial products category were at satisfactory levels except for farm equipment, and the Moffats home appliance business which was adversely affected by a strike. Avco Aerostructures completed a new 500,000-square foot facility in which it is building wing sets for the Lockheed 1011 luxury jetliner under a major contract. First deliveries are scheduled for the spring of 1970.

The volume of government sales declined in 1969, primarily as a result of reductions in the electronics and ordnance areas and lower research expenditures. Sales of Avco Lycoming gas turbine engines remained at high levels during the year and are expected to continue at substantial though somewhat lower levels. Reduced future military needs should be partly offset by increased commercial and industrial applications for these engines.

On behalf of the Board of Directors, we thank the employees and stockholders of Avco for their support.

Kendrick R Wilson Jr
Chairman

James R Kerr
President

February 4, 1970

DEFENDANT AVCO'S EXHIBIT E

AVCO CORPORATION

FINANCIAL REVIEW

GENERAL

CONSOLIDATED EARNINGS—Comparative results for 1969 and 1968 were as follows:

	1969	1968
Net earnings	$51,447,000	$57,022,000
Per outstanding common share	$3.12	$3.76
Per common share, assuming full dilution from exercise of conversion rights	$2.33	$2.69

Earnings per outstanding common share were computed after deducting cash dividend requirements on Avco's $3.20 preferred stock, amounting to $15,877,000 in 1969 and $16,835,000 in 1968. Average outstanding common shares were 11,414,482 during 1969 and 10,687,106 during 1968; average common shares, assuming full dilution, were 22,946,344 in 1969 and 21,208,984 in 1968. Fully diluted earnings were calculated on the total of the outstanding common shares and the number of common shares into which Avco's convertible debentures and $3.20 preferred stock are convertible.

Net earnings for 1969 include earnings of Avco's subsidiary, Seaboard Finance Company, since the effective date of its acquisition, January 21, 1969, amounting to $6,230,000, or $.55 per common share, after deducting interest on Avco's debentures issued in the acquisition. Results for 1969 also include net profit of $2,057,000, or $.18 per common share, realized on the sale during the first quarter of 1969 of Avco's 50% interest in Meredith-Avco, Inc., a community antenna television company. Assuming full dilution, Seaboard's contribution to earnings accounted for $.22 per share and the sale of Meredith-Avco for $.09 for the year 1969.

Net realized capital gains in the insurance and finance operations amounted to $8,277,000, or $.73 per common share ($.36 fully diluted), for 1969 and $13,032,000, or $1.22 per share ($.62 fully diluted), in 1968. For additional information concerning the investment portfolios of Avco's finance and insurance subsidiaries, see the note to the combined financial statements of Avco's finance subsidiaries and the statement of combined financial position of Avco's insurance subsidiaries.

ACQUISITION OF SEABOARD FINANCE COMPANY—Effective January 21, 1969, Avco acquired the common and convertible preferred shares of Seaboard Finance Company in exchange for an aggregate of $171,177,000 principal amount of its 5½% convertible subordinated and 7½% subordinated debentures and 10-year warrants to purchase 3,085,287 shares of Avco common stock at $56 per share.

BASIS OF REPORTING—As of November 30, 1969, Avco's finance and insurance subsidiaries, which had previously been fully consolidated, are shown in Avco's statement of consolidated financial position at the cost of Avco's investments plus its share of the undistributed earnings of such subsidiaries since

their acquisition. Avco's equity in the earnings of such subsidiaries is reflected in consolidated earnings. Consolidated financial statements for 1968 have been restated to conform to the 1969 treatment; the restatement had no effect on amounts previously shown for consolidated stockholders' equity or net earnings. Combined financial statements for Avco's unconsolidated finance companies (which include their insurance subsidiaries) and combined financial statements for Avco's unconsolidated non-finance insurance subsidiaries are shown separately.

BUSINESS LINE ANALYSIS—The following analysis, prepared for the first time this year, presents the contribution of Avco's various lines of business to consolidated revenues and net earnings. Interest and corporate expenses have been allocated as appropriate to the business lines and the three groups shown in the following analysis.

	Revenues or sales		*Net earnings*	
	1969	1968	1969	1968
		(Thousands of dollars)		
FINANCIAL SERVICES				
Insurance				
Life and accident and health insurance, variable annuity and mutual fund operations (including capital gains: $7,069,000 in 1969 and $10,893,000 in 1968)	$120,326	$118,808	$ 16,235	$ 20,392
Finance				
Consumer finance				
Finance operations	211,946	88,988	13,554	3,792
Equity in insurance earnings (including capital gains: $1,208,000 in 1969 and $2,139,000 in 1968)			5,557	3,553
	211,946	88,988	19,111	7,345
Credit card operations	20,405	10,107	455	394
Savings and loan operations	4,141	7,189	525	397
	236,492	106,284	20,091	8,136
Interest on Avco debentures issued for Seaboard Finance			(4,537)	
Allocation of Avco's corporate expenses not charged to business lines			(4,213)	(2,601)
	$356,818	$225,092	27,576	25,927
RECREATION AND LAND DEVELOPMENT				
Motion pictures and broadcasting	$ 57,968	$ 72,049	7,459	12,163
Land development	23,209	1,369	269	(284)
Gain on sale of Meredith-Avco, Inc.			2,057	
Allocation of Avco's corporate expenses not charged to business lines			(528)	(356)
	81,177	73,418	9,257	11,523
PRODUCTS AND RESEARCH				
Commercial				
Aircraft products	94,786	81,273	6,936	5,635
Other	166,860	171,763	1,847	4,483
	261,646	253,036	8,783	10,118
Government				
Aircraft products	385,668	382,435	5,965	8,188
Other	169,593	230,682	4,534	4,799
	555,261	613,117	10,499	12,987
Allocation of Avco's corporate expenses not charged to business lines			(4,668)	(3,533)
	816,907	866,153	14,614	19,572
	$898,084	$939,571		
			$ 51,447	$ 57,022

DEFENDANT AVCO'S EXHIBIT E

FINANCIAL SERVICES

INSURANCE

GROSS INCOME—Premium and investment income of Avco's combined insurance subsidiaries in 1969 rose to a record of $120,326,000 from $118,808,000 in the prior year. The aggregate face amount of individual life insurance sold by The Paul Revere Life Insurance Company showed an increase of 11%. Individual accident and health premiums increased 4%. Contract sales by The Paul Revere Variable Annuity Insurance Company, which also reached record levels, amounted to $5,750,000 in 1969.

Life insurance in force at Paul Revere Life has increased to $2,369,833,000 from $2,139,110,000 at the end of 1968.

SECURITIES INVESTMENT PORTFOLIO—At the 1969 year-end, the securities investment portfolio of Avco's combined insurance subsidiaries consisted of 64% bonds, 10% preferred stocks and 26% common stocks.

FINANCE

COMPARATIVE AMOUNTS—The primary reason for the substantial increases in the amounts reported for Avco's combined finance subsidiaries in 1969 over 1968 was the acquisition of Seaboard Finance Company in January 1969.

PUBLIC SALE OF DEBENTURES—During 1969, Avco's consumer finance subsidiaries obtained $60,000,000 of long term funds by the sale of debentures to the public.

ACQUISITIONS—In addition to the acquisition of Seaboard Finance, Avco acquired, in December 1969, Huntington Savings and Loan Association which was merged with Avco's existing savings and loan business to form one association having assets of approximately $192,000,000. Early in 1970, Avco's ownership in Carte Blanche Corporation was increased to 91% by the acquisition of an additional 37% interest in exchange for 264,000 shares of Avco's $3.20 preferred stock.

RECREATION AND LAND DEVELOPMENT

MOTION PICTURES AND BROADCASTING—Motion picture film rentals and earnings declined in 1969 from their peaks in 1968 when very substantial film rental income was derived from "The Graduate," which was a leading box office success throughout that year.

Avco Broadcasting Corporation had a record year for both revenues and earnings. The acquisition in March 1969 of AM radio station WRTH, Wood River, Illinois, which serves the greater St. Louis area, and growth in all broadcasting operations accounted for the increased profitability in 1969.

LAND DEVELOPMENT—The increase in earnings in 1969 resulted from the acquisition of Avco Community Developers, Inc. (formerly Rancho Bernardo, Inc.) early in the year.

PRODUCTS AND RESEARCH

COMMERCIAL—During 1969, sales of Avco reciprocating aircraft engines remained high, wing production continued for Grumman's Gulfstream II executive jet and work began on the contract for wing assemblies for Lockheed's 1011 jetliner.

The performance of Avco's other commercial operations remained satisfactory except for the farm equipment business which suffered along with the rest of the industry, and the appliance business in Canada which had reduced sales as a result of significant labor problems.

GOVERNMENT—The decrease in sales to the government in 1969 resulted in large part from a decline in government spending for space and missile research and production work. Avco's production of gas turbine engines, principally for helicopters, remained high. Earnings from Avco's government business were adversely affected by reduced sales, technical difficulties and anticipation of lower than originally contemplated production volume of the F-111 and C-5 aircraft, for which Avco supplies components.

ADDITIONS TO PLANT AND EQUIPMENT—Total additions to plant and equipment amounted to $37,174,000 in 1969 compared to $23,851,000 in 1968. The 1969 additions served principally to expand Avco's capability to produce airframe structures and to keep up to date Avco's technological capabilities in basic and applied scientific research.

Depreciation expense of the products and research units, computed principally by accelerated methods, amounted to $14,839,000 in 1969 compared to $12,727,000 in 1968.

MARGINS—Net earnings of Avco's products and research unts decreased in 1969 to 1.8% of sales from 2.3% of sales in the prior year. This decrease reflects the factors mentioned above and higher interest costs resulting from higher interest rates and increased borrowings during 1969.

BACKLOG—Avco's backlog of government and long term commercial orders decreased to $1,204,239,000 at the end of 1969 from $1,381,298,000 at the end of the prior year. Most of Avco's commercial sales are made on a current or short term basis and are included in backlog only to the extent of firm orders. One exception is $575,000,000 for 350 wing assemblies for Lockheed's 1011 jetliner contemplated in the contract awarded to Avco in 1968. At the end of both 1968 and 1969, there were orders and options for orders for 181 of these jetliners.

DEFENDANT AVCO'S EXHIBIT E

AVCO CORPORATION

CONSOLIDATED FINANCIAL POSITION

	November 30, 1969	November 30, 1968
	(Thousands of dollars)	
ASSETS		
Cash	$ 65,788	$ 42,592
Marketable securities, at cost (approximate market)	19,029	11,675
Receivables		
U.S. government contracts	127,119	127,978
Commercial	71,899	72,311
	199,018	200,289
Inventories, at lower of cost or market		
U.S. government contracts	181,859	179,724
Progress payments	(117,579)	(94,009)
Commercial products and real estate (Note 1)	169,288	103,772
	233,568	189,487
TOTAL CURRENT ASSETS	517,403	444,043
Investments in unconsolidated subsidiaries, at cost plus equity in undistributed earnings (Note 1)		
Insurance	139,913	132,890
Finance	345,322	116,552
	485,235	249,442
Property, plant and equipment, at cost		
Land	5,578	5,398
Buildings	126,842	100,258
Machinery and equipment	140,012	120,612
	272,432	226,268
Accumulated depreciation	(120,837)	(105,401)
	151,595	120,867
Miscellaneous investments and other assets	59,398	49,871
TOTAL ASSETS	$1,213,631	$ 864,223

See accompanying notes and financial review.

DEFENDANT AVCO'S EXHIBIT E

	November 30, 1969	November 30, 1968
	(Thousands of dollars)	
LIABILITIES AND STOCKHOLDERS' EQUITY		
Notes payable		
Banks	$ 63,307	$ 39,285
Commercial paper	178,992	103,709
Long term debt installments due within one year	21,640	6,432
Accounts payable and accrued liabilities	112,471	110,733
Income taxes	2,756	19,927
TOTAL CURRENT LIABILITIES	379,166	280,086
Long term debt (Note 2)		
Senior	237,700	224,639
Subordinated	176,727	5,071
STOCKHOLDERS' EQUITY		
Preferred stock, without par value:		
Authorized: 6,458,000 voting shares		
Designated: $3.20 cumulative convertible, stated at $6 per share		
Outstanding: 4,954,056 shares in 1969 (liquidation preference: $198,162,000)	29,724	29,877
Common stock, par value $3 per share:		
Authorized: 40,000,000 shares		
Outstanding: 11,468,957 shares in 1969	34,407	33,788
Reserved in 1969: 14,940,000 shares (Note 3)		
Additional paid-in capital	69,124	25,834
Retained earnings (Note 2)	286,783	264,928
TOTAL STOCKHOLDERS' EQUITY	420,038	354,427
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	$1,213,631	$ 864,223

DEFENDANT AVCO'S EXHIBIT E

AVCO CORPORATION

CONSOLIDATED EARNINGS

	Year ended November 30, 1969	Year ended November 30, 1968
	(Thousands of dollars)	
Net sales	$898,084	$939,571
Equity in net earnings of unconsolidated subsidiaries (including net realized capital gains: $8,277,000 in 1969 and $13,032,000 in 1968)		
Insurance	16,235	20,392
Finance	20,091	8,136
	934,410	968,099
Costs and expenses		
Cost of sales	733,789	769,365
Selling and administrative	89,918	82,745
Interest	44,648	23,422
Income taxes	14,608	35,545
	882,963	911,077
NET EARNINGS	$ 51,447	$ 57,022
Per outstanding common share	$3.12	$3.76
Per common share, assuming full dilution from exercise of conversion rights	$2.33	$2.69

See accompanying notes and financial review.

DEFENDANT AVCO'S EXHIBIT E

CONSOLIDATED STOCKHOLDERS' EQUITY

Year ended November 30, 1969

	Preferred stock	*Common stock*	*Additional paid-in capital*	*Retained earnings*	*Total*
			(Thousands of dollars)		
Balance at beginning of year	$ 29,877	$ 33,788	$ 25,834	$264,928	$354,427
Net earnings				51,447	51,447
Cash dividends declared					
$3.20 preferred stock				(15,873)	(15,873)
Common stock ($1.20 per share)				(13,700)	(13,700)
Value assigned to 3,085,287 warrants to purchase shares of Avco common stock			37,023		37,023
Market price of 132,653 shares of Avco common stock issued for the capital stock of a film company		398	5,041		5,439
Conversion of 25,740 shares of $3.20 preferred stock into 51,480 shares of common stock	(154)	154			
Issuance of common stock upon conversion of convertible debentures (10,437 shares) and exercise of options (11,212 shares)		65	358		423
Other	1	2	868	(19)	852
Balance at end of year	$ 29,724	$ 34,407	$ 69,124	$286,783	$420,038

CONSOLIDATED WORKING CAPITAL

Year ended November 30, 1969

	(Thousands of dollars)
SOURCES OF WORKING CAPITAL	
From operations	
Net earnings	$51,447
Depreciation of property, plant and equipment	16,632
Earnings of unconsolidated subsidiaries, less cash dividends received of $12,573,000	(23,753)
	44,326
Net increase in long-term debt, exclusive of $171,177,000 issued in acquisition of Seaboard Finance Company	13,540
Total	57,866
USES OF WORKING CAPITAL	
Cash dividends declared	29,573
Additions to property, plant and equipment, net	47,360
Cash investments in unconsolidated subsidiaries	3,840
Other, net	2,813
Total	83,586
DECREASE IN WORKING CAPITAL	$25,720

See accompanying notes and financial review.

DEFENDANT AVCO'S EXHIBIT E

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1: BASIS OF FINANCIAL STATEMENTS

For information on acquisitions and Avco's consolidation policy, see the Financial Review beginning on page 11. At November 30, 1969, investments in subsidiaries included an aggregate of $217,676,000 of intangible assets recognized in acquisitions, carried without amortization.

For information on the accounting practices of Avco's life insurance subsidiaries, see the separate combined financial statements of these subsidiaries.

Motion picture and real estate inventories represented approximately one-half of the total commercial inventories at November 30, 1969. As is normal in such businesses, a substantial portion of these inventories will not be realized within one year.

Canadian dollar amounts have been translated at the established rate of exchange of $1 Canadian = $.925 U.S. At November 30, 1969, $423,597,000 of receivables and $133,450,000 of liabilities of Avco's unconsolidated finance subsidiaries were represented by accounts to be settled in Canadian funds.

NOTE 2: LONG TERM DEBT AND RETAINED EARNINGS

At November 30, 1969, long term debt consisted of the following:

Senior	
Notes under Avco's revolving credit agreement providing for borrowings until April 15, 1972 to a maximum of $175,000,000 at the prime rate	$105,000,000
6¼% notes (an additional $13,125,000 will be issued in 1970; annual prepayments are $4,672,000 beginning in 1971 until 1988 when the balance is due)	86,875,000
Notes due $13,100,000 in 1970, $15,300,000 in 1971 and $8,173,000 in 1972, ½% over the prime rate (payable by The Paul Revere Corporation)	36,573,000
Non-interest bearing notes due in equal annual installments of $5,478,000 in 1970 and 1971	10,956,000
Other, maturities to 1991	19,936,000
	259,340,000
Installments due within one year	(21,640,000)
	$237,700,000
Subordinated	
7½% debentures, due 5% in 1992 and the balance in 1993	$ 77,131,000
5½% convertible debentures, due 5% in 1992 and the balance in 1993 (convertible at $54 per share)	94,646,000
5% convertible debentures, due in 1979 (convertible at $11.50 per share)	950,000
Other, maturities to 1980	4,000,000
	$176,727,000

Under agreements relating to Avco's long term debt, approximately $31,200,000 of Avco's consolidated retained earnings at November 30, 1969, were not restricted as to the payment of cash dividends on common and preferred stock, assuming maintenance of required working capital levels.

NOTE 3: CAPITAL STOCK

Avco common shares were reserved at November 30, 1969 for the following:

Conversion of $3.20 preferred stock	9,908,112
Conversion of 5½% debentures	1,752,695
Conversion of 5% debentures	82,627
Exercise of warrants to purchase common shares at $56 per share until 1978	3,085,287
Exercise of employee stock options	111,279
	14,940,000

Of the 111,279 shares of common stock reserved at November 30, 1969 for stock options, under a plan approved by Avco's stockholders, there were options outstanding on 108,929 shares, of which options on 33,503 shares were then exercisable. The exercise prices of the outstanding options, which were above the market prices on the dates the options were granted, aggregate $3,877,000, and the options expire at various dates between August 18, 1970 and November 18, 1974. At November 30, 1968, there were reserved under the stock option plan 116,581 shares against which options on 68,298 shares were then outstanding. During the 1969 fiscal year, options on 47,850 shares were granted, 5,302 shares were issued on exercise of options and options on 1,917 shares expired. In addition, 5,910 shares were issued during 1969 upon exercise of options exchanged for outstanding options of Seaboard Finance Company.

The $3.20 preferred stock is not redeemable prior to January 1, 1973; thereafter Avco may redeem the stock at $100 per share, decreasing $2 annually until reaching $80. Each preferred share is convertible into two common shares of Avco and the liquidation preference is $40 per share.

DEFENDANT AVCO'S EXHIBIT E

NOTE 4: RETIREMENT PLANS

Avco and its subsidiaries have in effect contributory and non-contributory retirement plans covering substantially all employees. The cost of these plans, including amortization of prior service cost over 30 years, was approximately $12,600,000 in 1969 and $10,268,000 in 1968. At November 30, 1969, unfunded vested benefits related to prior service were approximately $13,000,000.

NOTE 5: INCENTIVE COMPENSATION

Under a plan approved by Avco stockholders, there is payable as incentive compensation 10% of the amount by which defined earnings exceed 8% of defined capital, both as determined by Avco's independent auditors. Incentive compensation amounted to $4,205,000 in 1969 and $5,185,000 in 1968.

NOTE 6: LITIGATION

As a result of the tender offer for Avco shares made by Paul Revere in 1967 and the subsequent combination of that company with Avco, two actions have been brought against Avco, Paul Revere and certain directors. The first of these alleges failure to disclose material facts in connection with the tender offer, and the second alleges that the exchange ratio on which the combination of the companies was based is unfair to Avco. All of the defendants have been advised by their respective counsel that there are meritorious defenses to the claims alleged in these actions, which are presently in a pretrial stage.

REPORT OF CERTIFIED PUBLIC ACCOUNTANTS

ARTHUR YOUNG & COMPANY

277 PARK AVENUE
NEW YORK, N. Y. 10017

The Board of Directors and Stockholders
Avco Corporation

We have examined the accompanying statement of consolidated financial position of Avco Corporation at November 30, 1969 and the related statements of earnings, stockholders' equity and working capital for the year then ended. We have also examined the statements of combined financial position of its unconsolidated finance subsidiaries at November 30, 1969 and of its unconsolidated insurance subsidiaries at December 31, 1969 and the related statements of earnings for the years then ended. Our examinations of the financial statements of Avco Corporation and its subsidiaries other than Seaboard Finance Company and its subsidiaries were made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. It was not practicable to confirm amounts due on U.S. government contracts, as to which we have employed other auditing procedures. We have received the report of other certified public accountants with respect to their examination of the financial statements of Seaboard Finance Company and its subsidiaries.

In our opinion, based on our examinations and the report of other certified public accountants referred to above, the statements mentioned above present fairly the consolidated and combined financial positions of Avco Corporation and of its unconsolidated finance subsidiaries at November 30, 1969 and of its unconsolidated insurance subsidiaries at December 31, 1969 and the results of operations and the sources and uses of consolidated working capital for the years then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year, after restatement of that year for the change in consolidation policy described in the Financial Review. Further in our opinion, the business line analysis in the Financial Review is fairly stated in all respects material to the above described financial statements taken as a whole.

February 4, 1970

Arthur Young & Company

DEFENDANT AVCO'S EXHIBIT E

AVCO'S FINANCE SUBSIDIARIES

COMBINED FINANCIAL POSITION

	November 30, 1969	November 30, 1968
	(Thousands of dollars)	
ASSETS		
Cash	$ 72,843	$ 56,139
Receivables (including amounts due after one year)		
Mortgage	52,458	47,786
Retail installment	498,676	356,794
Consumer loans	906,923	266,223
Wholesale and capital loans	29,010	50,053
Other	55,208	32,519
	1,542,275	753,380
Unearned discount and service charges	(187,705)	(91,594)
Allowance for losses	(34,868)	(14,475)
	1,319,702	647,311
TOTAL CURRENT ASSETS	1,392,545	703,450
Investments in insurance subsidiaries of finance companies	47,063	17,301
Property and equipment, at cost (less accumulated depreciation: $8,364,000 in 1969 and $3,787,000 in 1968)	14,457	6,613
Intangible assets recognized in acquisitions, without amortization	32,808	30,135
Miscellaneous	13,818	12,849
TOTAL ASSETS	$1,500,691	$ 770,348
LIABILITIES AND COMBINED EQUITY		
Notes payable		
Banks	$ 175,010	$ 124,935
Commercial paper	389,732	170,595
Long term debt installments due within one year	35,412	18,639
Savings deposits	71,323	61,988
Accounts payable and accrued liabilities	44,278	23,748
Income taxes	13,798	4,005
TOTAL CURRENT LIABILITIES	729,553	403,910
Long term debt		
Senior notes, 4¾% to 9¼%, maturing annually to 1989	407,389	168,498
Subordinated and capital notes, 4½% to 8¾%, maturing annually to 1988	142,776	77,278
COMBINED EQUITY		
Avco equity	204,146	106,331
Minority equity	16,827	14,331
TOTAL COMBINED EQUITY	220,973	120,662
TOTAL LIABILITIES AND COMBINED EQUITY	$1,500,691	$ 770,348

DEFENDANT AVCO'S EXHIBIT E

COMBINED EARNINGS

	Year ended November 30, 1969	Year ended November 30, 1968
	(Thousands of dollars)	
Interest, discount and service charge income	$236,492	$106,284
Equity in net earnings of insurance subsidiaries of finance companies (including net realized capital gains: $1,208,000 in 1969 and $2,139,000 in 1968)	5,557	3,553
	242,049	109,837
Expenses		
Interest and debt expense	73,961	37,341
Provision for losses on collection of receivables	25,154	12,284
Other operating expenses	104,858	45,542
Income taxes	17,985	6,534
	221,958	101,701
NET EARNINGS	$ 20,091	$ 8,136

BASIS OF FINANCIAL STATEMENTS

The financial statements of Avco's finance subsidiaries combine the accounts of Avco Delta Corporation and Seaboard Finance Company (since its acquisition by Avco in January 1969) and include the accounts of their subsidiaries, except those engaged in the insurance business. Investments in insurance subsidiaries are carried at cost plus undistributed earnings since acquisition. At November 30, 1969, combined assets and combined liabilities of these insurance companies amounted to $100,911,000 and $58,210,000, respectively. Included in the assets of the insurance companies are investments in securities carried at an aggregate cost of $82,112,000 at November 30, 1969 and $24,693,000 at November 30, 1968, for which the aggregate market values at those dates were $76,292,000 and $26,167,000, respectively. Income taxes of $281,000 in 1969 and $147,000 in 1968 have been deducted from the amount of net realized capital gains of insurance subsidiaries. Other Avco finance subsidiaries included in these statements are Carte Blanche Corporation and Ventura Savings and Loan Association.

For information concerning the amounts of receivables and liabilities of Avco's finance subsidiaries to be settled in Canadian funds, see Note 1 to Avco's consolidated financial statements.

DEFENDANT AVCO'S EXHIBIT E

AVCO'S INSURANCE SUBSIDIARIES

COMBINED FINANCIAL POSITION

	December 31, 1969	December 31, 1968
	(Thousands of dollars)	
ASSETS		
Investments		
Bonds, at amortized cost	$144,746	$131,222
Stocks, at cost (market: $67,740,000 in 1969 and $93,728,000 in 1968)	79,913	76,680
Mortgage loans	155,663	148,124
Loans to policyholders	15,431	12,459
Other invested assets	6,240	6,723
	401,993	375,208
Cash	10,881	16,290
Premiums deferred and uncollected	12,127	11,129
Property, plant and equipment, at cost (less accumulated depreciation: $3,449,000 in 1969 and $3,272,000 in 1968)	11,642	10,584
Other assets	4,733	5,424
TOTAL ASSETS	$441,376	$418,635
LIABILITIES AND COMBINED EQUITY		
Policy reserves	$274,242	$260,248
Claims liability	6,534	6,199
Funds on deposit and other liabilities	19,728	17,660
Federal income taxes (Note 2)	2,398	3,077
	302,902	287,184
COMBINED EQUITY (Note 2)	138,474	131,451
TOTAL LIABILITIES AND COMBINED EQUITY	$441,376	$418,635

DEFENDANT AVCO'S EXHIBIT E

COMBINED EARNINGS

	Year ended December 31, 1969	Year ended December 31, 1968
	(Thousands of dollars)	
Premium and other insurance income	$ 99,793	$ 99,862
Investment income (less investment expenses: $1,645,000 in 1969 and $1,315,000 in 1968)	20,533	18,946
	120,326	118,808
Expenses		
Death claims and other benefits	58,138	55,554
Increase in policy and other contract reserves	13,913	17,327
Commissions and other expenses	34,472	32,114
Federal income taxes	4,637	4,314
	111,160	109,309
Earnings before net realized capital gains	9,166	9,499
Net realized capital gains (less federal income tax: $2,520,000 in 1969 and $3,976,000 in 1968)	7,069	10,893
NET EARNINGS	$ 16,235	$ 20,392

NOTE 1: BASIS OF FINANCIAL STATEMENTS

The financial statements of Avco's combined insurance subsidiaries include the accounts of The Paul Revere Life Insurance Company, The Paul Revere Variable Annuity Insurance Company, The Paul Revere Equity Sales Company and The Paul Revere Equity Management Company.

Accounting practices of life insurance companies are prescribed by regulatory authorities. To the extent that these practices differ from accounting principles generally accepted for use by other industries, they have been appropriately adjusted for inclusion in these combined financial statements. No allowance is made in these statements for the fact that costs incurred upon issuance of new life insurance policies are charged against earnings in the period incurred rather than deferred and amortized over the terms of the policies, the result of which is to reduce net earnings in a period of growth and increase net earnings in a period of decline in new business.

NOTE 2: FEDERAL INCOME TAXES

At the end of 1969, Paul Revere Life had $33,100,000 of policyholders' surplus included in retained earnings (reflected in combined equity in the accompanying statement). If this amount became taxable to Paul Revere Life, the resulting maximum tax liability would be approximately $17,500,000. Under present circumstances, Paul Revere Life does not anticipate any transactions which would cause the policyholders' surplus to become taxable.

The increase in policyholders' surplus was $3,600,000 in 1969 and $3,900,000 in 1968, the income taxes on which would have been $1,900,000 and $2,000,000, respectively.

DEFENDANT AVCO'S EXHIBIT E

AVCO CORPORATION

FIVE YEAR FINANCIAL DATA

	1969	1968	1967	1966	1965
		(Thousands of dollars, except per share amounts)			
FINANCIAL SERVICES					
Revenues	$356,818	$225,092	$200,642	$171,588	$149,372
Earnings	27,576	25,927	29,345	23,430	23,61[illegible]
RECREATION AND LAND DEVELOPMENT					
Net sales	81,177	73,418	39,830	40,219	33,688
Earnings	9,257	11,523	2,728	5,393	5,042
PRODUCTS AND RESEARCH					
Net sales	816,907	866,153	756,379	617,340	442,456
Earnings	14,614	19,572	21,174	23,993	17,126
CONSOLIDATED					
Earnings	51,447	57,022	53,247*	52,816	45,783
Per outstanding common share	3.12	3.76	3.44*	3.14	2.48
Per common share, assuming full dilution from exercise of conversion rights	2.33	2.69	2.48*	2.34	2.02
Stockholders' equity at end of year	420,038	354,427	325,491**	401,940	364,741
CASH DIVIDENDS PAID PER COMMON SHARE	1.20	1.20	1.20	1.05	1.00

*Before extraordinary capital gain of $20,439,000 or $2.03 per outstanding common share ($.97 assuming full dilution).
**Reduced by $135,316,000 cost of Avco treasury shares retired for accounting purposes.

DEFENDANT AVCO'S EXHIBIT F.

(pages 1 through 10)

ARBITRATION

Between

LOCAL 1010, UAW	)	
	)	ARBITRATION NO. 9378
	)	
and	)	GRIEVANCE NO. B-29062
	)	MICHAEL HOLODNAK
	)	
AVCO LYCOMING DIVISION AVCO CORPORATION STRATFORD, CONNECTICUT	)	

COMPANY BRIEF

STATEMENT OF THE CASE

Michael Holodnak, Grievant herein, was terminated by the Company May 23, 1969, for violation of General Plant Conduct Rule 19. Holodnak had composed and caused to be published an article entitled "Building A Union Local", which contained false, vicious and malicious statements in violation of General Plant Conduct Rule 19 which provides as follows:

> "Offsenses under these rules may be cause for suspension or discharge.
>
> Making false, vicious or malicious statements concerning any employee or which affect the employee's relationship to his job, his supervisors, or the Company's products, property, reputation, or good will in the community."

(Joint Exhibit 2)

Article V of the Labor Agreement provides that the Company shall have the right to discharge or discipline employees for just cause (Joint Exhibit 1, Tr. p. 11). The union concedes that Rule 19 is a reasonable rule (Tr. p. 10). The issue, therefore, concerns the applicability of Rule 19 to Holodnak's article.

DEFENDANT AVCO'S EXHIBIT F

The Arbitration Hearing in this matter was conducted before Burton B. Turkus, Arbitrator, July 17, 1969, at which time all parties were present and given a full opportunity to present the facts.

Some time in February or March 1969, Michael Holodnak composed an article entitled "Building A Union Local" (Tr. p. 16). He showed his composition to approximately eighteen fellow workers in the plant during working time (Tr. pp. 22, 91). Subsequently, Holodnak got in touch with AIM, the American Independent Movement, and, desiring that the article be widely circulated through the community, gave permission for the article's publication in the American Independent Movement (Tr. pp. 23, 95, 111, 39, 91, 21, 17).

Holodnak testified that the article, published in the May 15, 1969 issue of AIM, was accurately reproduced as he had written it and circulated and read by both fellow employees and non-employees residing in a wide geographical area around the Stratford plant (Tr. pp. 19, 11). Holodnak testified that no one helped him prepare the article. It was his own idea (Tr. p. 27).

The general tenor of the article is malicious and constitutes an insidious attempt to damage the Company's reputation and disrupt its plant operations. The background against which it was written is relevant to an understanding of the article's viciousness.

Under the party's 1964-67 Collective Bargaining Agreement, there were twenty-two wildcat strikes and in calendar 1963, two more serious wildcats (Tr. p. 155). The solution of the wildcat problem was critical to the continued existence of the plant. Both Union and Company took steps to stop this disruption (Tr. p. 158). In the summer of 1968, an Arbitrator issued a cease and desist award, with respect to wildcat activity and a Court Order confirming

DEFENDANT AVCO'S EXHIBIT F

the award was entered December 10, 1968 (Tr. p. 61) (Company Ex. 2, 3). As the result of another arbitration decision concerning discipline for violation of the No Strike laws, twenty-two employees were terminated.

Mr. Holodnak had been, until February 1965, a Union Steward. In the course of his responsibilities as a Steward, he had occasion to review and work with the Contract and General Plant Conduct Rules. Holodnak, however, would have the Arbitrator believe that he did not know of the existence of Plant Conduct Rule 19 at the time he wrote the article and, more seriously, was not aware of the wrongfulness of wildcat strikes under the Labor Agreement. His testimony on this point is hardly credible. In self contradiction, Holodnak testified that he knew of the No Strike clause in the Contract and realized that his obligation as a Steward was to use every effort to bring wildcating employees back to work (Tr. pp. 57, 58). In the face of this admitted knowledge, he states that at the time he wrote the article employees were uncertain about their right to wildcat and that he believed that they did have a right to "express themselves independently with the organization" and wildcat (Tr. pp. 56, 57, 60, 61). Holodnak told Labor Relations Supervisor Ashlaw that individuals had the right to wildcat at the hearing following his discharge (Tr. p. 75).

Holodnak testified that the purpose of his article was to create a situation where people would try to find solutions to problems. (Tr. p. 51). The main problem with which he said he was concerned was the alleged breakdown of the grievance procedure.

It is obvious that the real purpose of his article was to incite fellow workers to violate their agreement and pressure the union to add the wildcat to its arsenal of weapons. As indicated above, such a goal at a time when both Union and Company were working to seek solutions to the wildcat problem, demonstrates Holodnak's real malice toward the Company. The

DEFENDANT AVCO'S EXHIBIT F

false statements in the article concerning the Company and its supervision and the libelous disparagement of the arbitration procedure were designed to further this malicious purpose.

The following specific parts of the article provided the Company with just cause for Holodnak's termination:

> "Yet, miraculously, the bulk of the rank and file, in its hunger for freedom, continues to retain enough of its intrinsic independence to be unruly, disrespectful and almost radical in its attitude toward this controlling authority. This is a positive attitude toward building a strong union. But the Local leadership, on the other hand, has somewhere along the line capitulated, fallen down on the job to become tricked by the company into policies that are apologetic, compromising and retreating, a negative attitude that continues to keep our union weak.
>
> And so, despite the fact that the company has a stupid, incompetent and irresponsible management that has arrogantly sabotaged the grievance procedure, the union members must continue to kiss the company's posterior for the privilege of living. But labor history clearly shows that being obedient and submissive will not alter the company's behavior one way or another. But an aggressive union, one that stands up to the company and demands some equity in these decisions that affect us, will not only unite the membership, but can stop a move like that, as has been done in the 1930's by sitdown strikes that sucessfully stopped General Motors from its intended move out of an area. Of course the strategy in our case may not be identical, but a positive stand, on issues that concern our destiny, must be taken.
>
> We mustn't forget, that company's sacred laws forbid morality.
>
> Most union members resent being treated like kindergarten children by the company and, when an opportunity presents itself, do not hesitate to act individually or in a group against the company.
>
> Anyway, Avco, like all large corporations, has become sophisticated in its underhanded union busting tactics, which run the gamut from sweet talk, giving special privileges to company orientated candidates (such as allowing them to campaign on company time), using rats (stool pigeons), to making it miserable for and sometimes firing the really dedicated unionists, and last but not least, buying off whatever other effective opposition may be left with a foremanship.

DEFENDANT AVCO'S EXHIBIT F

It's probably true that wildcat strikes are not the answer, but wildcats wouldn't even be tempting if we had a good solid union that knows where it's at and that does not, through the grievance procedure, compromise away our rights. Yet it is comforting to have wildcats in our arsenal of weapons, just in case.

In any event, the company gets away with its devious and unfair labor practices because the company is above the law, (even the more naive realize this) and the biased judges and arbitrators, for all practical purposes, belong to the company. The most recent example was the firing of the twenty-two so-called "hard core of miscreants." From his Heavenly perch the "impartial" Arbitrator, backing up the company, pronounced his God-like opinion upon us poor sinful mortals while praising the pure-as-the-snow "patient company" to the high heavens.

Nevertheless, many of our union officials keep telling us to be "reasonable." But this is precisely what most of us have been for too many years, and it's been ridiculous.

The point is that nothing has ever been accomplished by so-called "reasonable people." Actually it's unreasonable to tell us that we must be "reasonable" to all the official insanity that exists around us. The labor movement itself would have never been born if the workers had been "reasonable."

ARGUMENT

The United States Supreme Court has recently reaffirmed that knowingly or recklessly made false criticism of one's employer is not protected free speech within the meaning of the First Amendment to the Constitution and affords a basis for the employee's dismissal. Pickering v. Board of Education 391 US. 563 (1968). Damage to the employer is of no relevancy. Malicious libel enjoys no Constitutional protection in the labor relation's context. Linn v. United Plant Guard Workers of America, 383 US. 53 (1966).

Arbitration decisions also have reaffirmed a company's right to discipline employees who make false and defamatory statements to outsiders

with respect to the employer's conduct of his business. Thiokol Chemical Corp. 52-L.A. 1254 (June 21, 1969).

Arbitrator Ralph Williams in the Thiokol case upheld the discharge of a grievant who had charged the company with conspiracy, rationalism, defamation of character, failure to provide safe working conditions, issuance of improper work instructions and many other injurious acts, none of which appear to have been founded in fact. Williams found:

> "A highly specialized industrial complex requires as much of a congenial, peaceful atmosphere as competent and diligent Union and Company officials can establish and perpetuate. Employees themselves owe a duty to their fellow workers and to their employer to effectively fit themselves into the everyday processes of production, to the end that all may profit. Malcontents and troublemakers so disrupt normal industrial activity as to thwart the desires of employer and employees alike to get on with the work at hand. They have no place in industrial society. Their disloyalty destroys their usefulness as employees. The Grievant was such a person.
>
> Such unsubstantiated charges as these tend to undermine effective Company-Union-employee relationships."
>
> 52-L.A. 1257, 1258.

In the present case, Holodnak admits that when he wrote the article he was not sure of the truth of its contents. He agreed at the hearing that certain parts of the article were not "exactly true" (Tr. p. 136). He admitted that he was "a little rash in my position" (Tr. pp. 78, 79). He excuses his action by explaining that he thought it was not wrong to libel anyone unless the liability would cause injury (Tr. pp. 107, 133, 139, 135). This alleged misconception is suspect in view of the fact Holodnak was an experienced author who had written articles for several years and had authored four books (Tr pp. 34, 96).

The statements in the article identified above were made in an irresponsible manner without any basis in fact. When asked what knowledge he had

for his belief that the Company had a "stupid, incompetent and irresponsible management", Holodnak said generally that he was speaking of management from the top down but still could not pick out a single recent example of the Company's incompetency (Tr. pp. 40, 41). He testified that before a person can be classified "as stupid" a pattern of stupid acts must be established yet was unable to show any example of the alleged stupidity (Tr. p. 90).

Holodnak further charged that the Company "arrogantly sabotaged the grievance procedure" (Tr. p. 45). As reviewed above, the evidence, however, indicates the contrary. Holodnak presented no evidence that the Company sabotaged grievance procedure and conceded finally that he knew that the grievance procedure had improved in the year preceding the writing of his article and that he did not know in fact whether any delays or the "sabotage" was by accident or design (Tr. pp. 50, 66, 46, 70).

Holodnak charged in his article that the Company's "sacred laws forbid morality". He was unable to support his assertion at the hearing other than by the general explanation that many decisions the Company makes are without reference to right or wrong (Tr. pp. 63, 64). He was unable to identify any specific rule of the Company that forbids morality (Tr. p. 76).

His complaint that the Company committed unfair labor practices was apparently based upon his failure to receive a promotion some years ago (Tr. p. 79) He admitted, however, that, in general, the Company does have a good and fair promotion policy and that unfair application of this policy is "a rare occurrence".

Holodnak did not know of any employee who was found by the NLRB to have been discriminated against because of this union activities. (Tr. p. 143). In fact, there have been none (Tr. p. 83).

DEFENDANT AVCO'S EXHIBIT F

While Holodnak recites in the article that the Company had fired dedicated unionists, he could not remember one single name at the arbitration hearing or provide any basis for this allegation. He could not remember even one individual who was the victim of "union busting tactics" (Tr. p. 87). He could not identify even one of the foremen whom he had charged in his article had been "bought off".

As indicated above, the wildcat strike issue was a major problem at the plant. Nevertheless, Holodnak wrote that "it is comforting to have wildcat strikes in our arsenal of weapons, just in case". He follows this up pointing out that "nothing has ever been accomplished by so-called reasonable people". He criticizes union officials for telling the workers to be "reasonable". He points out that the positive attitude one should have in building a union is to be "unruly, disrespectful and almost radical in its attitude of its controlling authority". He cited as a successful tactic the 1930 General Motors sitdown strikes and said that the "biased judges and arbitrators belong to the Company", questioning the impartiality of the Arbitrator's decisions which upheld the discharge of twenty-two employees who violated the No Strike clause.

Despite the widely published decisions of the Arbitrator, with respect to the illegality of wildcat strikes, Holodnak tried to convince the Arbitrator at the hearing that he believed individuals have the right to wildcat. Holodnak testified:

> "Q Now, with reference to that same subject, calling your attention to the last paragraph in the first column on page 15, you state: "It's probably true that wildcat strikes are not the answer, but wildcats wouldn't even be tempting if we had a good solid union that knows where it's at and that does not, through the grievance procedure, compromise away our rights. Yet it is comforting to have wildcats in our arsenal of weapons, just in case." Did you believe that, at the time you wrote the article, to be true?
>
> A Well, at that time there were a lot of questions up in the air about wildcats and the rights that people, as individuals, had, as far as expressing themselves independently of the organization that they happened to belong to at the time. Now, I don't really know the answer,

DEFENDANT AVCO'S EXHIBIT F

as far as constitutionally, whether individuals have that right or not. I believed at that time, though, that they did have it. But I think --."

(Tr. pp. 56, 57).

Despite his assertion that individuals had the right to wildcat, Holodnak conceded, as pointed out above, that he knew, as a Union Steward, that such work stoppages violated the contract and was familiar with the arbitration awards of the 1966 and 1967 period (Tr. p. 58). He concedes that when he wrote the article the Union was not as he charged, a supine union which allowed the Company to do what it wanted (Tr. pp. 69, 70). He testified that he knew wildcats were injurious to both the Company and the Union. Yet he promoted and justified the wildcat in his advice with clear malicious intent.

Although Holodnak realized the importance of arbitrator's credibility and realized that it is improper to term any judge "corrupt or assert that he had been bout off, he wrote that the Arbitrator employed by the parties herein belonged to the Company (Tr. p. 77). This charge he concedes was unsubstantiated by any evidence (Tr. p. 79).

Holodnak believed that libeling AVCO was no consequence. The Company's reputation in the community did not concern him (Tr. pp. 112, 113).

The evidence, therefore, demonstrates that the Grievant had no basis of information on which he based the representation malic in the AIM article and that the reckless charges he made were designed to cause harm to the Corporation. The article demonstrates a malice toward AVCO, a complete lack of loyalty, an employee attitude which makes future employment impossible and irreputable harm to the Company's reputation.

The enforcement of Rule 19 is not a unique occurrence at the Stratford plant. Two employees have been discharged for violation of Rule 19 (Tr. pp. 154, 155)

DEFENDANT AVCO'S EXHIBIT F

There is no evidence that similar defamation has been left unpunished.

The only evidence on this point presented by the Union was that one Fernandez, in the course of an election, did make certain unidentified charges against his Union opponent (Tr. pp. 143, 144).

The AIM article was beyond the bounds of fair criticism. If such conduct were sanctioned by the Arbitrator, the collective bargaining process would be seriously damaged. The evidence conclusively demonstrates the vicious and malicious nature of the article concerning the Company, its supervisors, its reputation and good will in the community. The falsity and conscious disregard of the truth of certain statements in the article have been established. Accordingly, the Company respectfully requests that the grievance be denied.

Respectfully submitted,

NAPIER, SULLIVAN & BANTA

By _____
James R. Cox

105 West Adams Street
Chicago, Illinois 60603
Area Code 312 - CEntral 6-0177

DEFENDANT AVCO'S EXHIBIT H.

AFFIDAVIT

STATE OF CONNECTICUT:

SS:

COUNTY OF NEW HAVEN:

I, Peter J. O'Connell, do give oath to the following statement. I am a graduate student in History at Yale University. On February 23, 1970, I made service of the summons and complaint in the above action on William Ashlaw and Avco Corporation as follows. I went to the Avco plant in Stratford, Connecticut, and asked to see the statutory agent for service of process and Mr. Ashlaw. I was told to return at 1 P.M.

Upon my return, I was met at the plant gate by a man who identified himself as Thomas Smarz, Ashlaw's superior. Smarz told me that Ashlaw had gone for the day. I asked him if he would accept service of process for Mr. Ashlaw, and he answered affirmatively. Then I asked if he would accept service of process upon Avco. Again he replied affirmatively. I handed him the two sets of papers and left.

SIGNED Peter J. O'Connell
Peter J. O'Connell

WITNESSED: George A. Johnson
George A. Johnson
Commissioner, Superior Court

633a

DEFENDANT AVCO'S EXHIBIT I.

I certify that this is a true copy of the certificate received for record.

Attest: Edna S. McNamara
Asst. Registrar of Vital Statistics
TOWN OF BRIDGEPORT
Legal Fee - $2.00

Date MAY 31 1973

NOT GOOD WITHOUT RAISED SEAL OF CERTIFYING OFFICIAL

CONN. STATE DEPT. OF HEALTH

6c

1. DECEASED — NAME (FIRST, MIDDLE, LAST): EDWARD BURGSTEIN			2. SEX: M		STATE FILE NUMBER
3. DATE OF BIRTH (MONTH, DAY, YEAR): Dec 29, 1918	4. RACE — WHITE, NEGRO, AMERICAN INDIAN, ETC. (SPECIFY): white	5a. AGE — LAST BIRTHDAY (YEARS): 54	5b. UNDER 1 YEAR: MOS. / DAYS	5c. UNDER 1 DAY: HOURS / MIN.	6. DATE OF DEATH (MONTH, DAY, YEAR): Feb 9 1973
7a. COUNTY OF DEATH: Fairfield	7b. TOWN OF DEATH: Bridgeport	7c. HOSPITAL OR OTHER INSTITUTION — NAME (IF NOT IN EITHER, GIVE STREET AND NUMBER): St. Vincents Hospital			
8a. CITY & STATE OF BIRTH (Country, if not U.S.): Bridgeport, Conn	8b. CITIZEN OF (Country): USA	9. MARRIED, NEVER MARRIED, WIDOWED, DIVORCED, LEGALLY SEPARATED: married	10. LAST SPOUSE (If wife, give maiden name): Barbara		
11. SOCIAL SECURITY NUMBER	12a. USUAL OCCUPATION (GIVE KIND OF WORK DONE DURING MOST OF WORKING LIFE, EVEN IF RETIRED): Attorney	12b. KIND OF BUSINESS OR INDUSTRY: Law			
13a. RESIDENCE — STATE: Conn	13b. COUNTY: Fairfield	13c. TOWN: Westport	13d. STREET AND NUMBER: 11 Quarter Mile Road		
14a. WAS DECEASED A VETERAN? (SPECIFY YES OR NO): yes	14b. IF YES, GIVE WAR: WW 2	14c. UNIT OR SHIP:			
15. FATHER — NAME (FIRST, MIDDLE, LAST): Nathan Burstein	16. MOTHER — MAIDEN NAME (FIRST, MIDDLE, LAST): Anna Perell				
17a. INFORMANT — NAME: Kathy Burstein	17b. MAILING ADDRESS (STREET OR R.F.D. NO., CITY OR TOWN, STATE, ZIP): 11 Quarter Mile Rd., Westport, Conn.				

PART I. DEATH WAS CAUSED BY: (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c).)

		APPROXIMATE INTERVAL BETWEEN ONSET AND DEATH
18. IMMEDIATE CAUSE (a)	METASTATIC CARCINOMA	2½ YRS
CONDITIONS, IF ANY, WHICH GAVE RISE TO IMMEDIATE CAUSE (a), STATING THE UNDERLYING CAUSE LAST — DUE TO, OR AS A CONSEQUENCE OF: (b)		
DUE TO, OR AS A CONSEQUENCE OF: (c)		

PART II. OTHER SIGNIFICANT CONDITIONS: CONDITIONS CONTRIBUTING TO DEATH BUT NOT RELATED TO CAUSE GIVEN IN PART I (a)

19a. AUTOPSY (YES OR NO): YES	19b. IF YES WERE FINDINGS CONSIDERED IN DETERMINING CAUSE OF DEATH: NO

20a. ACCIDENT, SUICIDE, HOMICIDE, OR UNDETERMINED (SPECIFY)	20b. DATE OF INJURY (MONTH, DAY, YEAR)	20c. HOUR	20d. HOW INJURY OCCURRED (ENTER NATURE OF INJURY PART I OR PART II, ITEM 18)	20e. INJURY AT WORK (SPECIFY YES OR NO)

20f. PLACE OF INJURY — AT HOME, FARM, STREET, FACTORY, OFFICE BLDG., ETC. (SPECIFY)	20g. LOCATION (STREET OR R.F.D. NO., CITY OR TOWN, STATE)	20h. SURGERY RELEVANT TO CONDITION REPORTED IN ITEM 18 (Name of surgeon) (Date performed)

CERTIFICATION — PHYSICIAN: I ATTENDED THE DECEASED FROM (21a. MONTH DAY YEAR) 1-5-73 TO (21b. MONTH DAY YEAR) 2-9-73 AND LAST SAW HIM/HER ALIVE ON (21c. MONTH DAY YEAR) 2-9-73. DEATH OCCURRED (21d. HOUR) 11A M. ON THE DATE, AND, TO THE BEST OF MY KNOWLEDGE, DUE TO THE CAUSE(S) STATED.

CERTIFICATION — MEDICAL EXAMINER: IN MY OPINION, ON THE DATE AND HOUR OF DEATH DUE TO THE CAUSE(S) STATED, DEATH RESULTED ON OR ABOUT (22a.) THE DECEDENT WAS PRONOUNCED DEAD (22b. MONTH DAY YEAR HOUR) 2-9-73 11A.

23a. CERTIFIER — NAME (TYPE OR PRINT): Irwin S. Eskwith	SIGNATURE: Irwin S. Eskwith, M.D.	DEGREE OR TITLE:
23b. MAILING ADDRESS — CERTIFIER (STREET OR R.F.D. NO., CITY OR TOWN, STATE, ZIP): 29 Federal Street Bridgeport Conn 06606		23c. DATE SIGNED (MONTH, DAY, YEAR): 2-9-1973

24a. BURIAL, CREMATION, REMOVAL (SPECIFY): burial	24b. CEMETERY OR CREMATORY — NAME: Loyalty	24c. LOCATION — CITY OR TOWN, STATE: Fairfield, Conn
25a. DATE (MONTH, DAY, YEAR): Feb.11 1973	25b. FUNERAL HOME — NAME AND ADDRESS (STREET OR R.F.D. NO., CITY OR TOWN, STATE, ZIP): A.L. GREEN FUNERAL HOME BRIDGEPORT, CONN 06604	
26a. FUNERAL DIRECTOR OR EMBALMER — SIGNATURE: Charles L. Green	26b. NAME OF EMBALMER IF OTHER THAN LICENSEE: Ralph H. Mortimer	26c. LICENSE NUMBER: 1551

27a. THIS CERTIFICATE RECEIVED FOR RECORD ON: FEB 13 1973 | 27b. BY: | REGISTRAR: Jack McCarthy

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

MICHAEL HOLODNAK, Plaintiff-Appellee vs. AVCO CORPORATION, AVCO LYCOMING DIVISION, STRATFORD, CONNECTICUT, Defendant-Appellant	CIVIL APPEAL NO. 74-2381

CERTIFICATE OF SERVICE

I hereby certify that two copies of the Joint Appendix for the above case have been furnished by regular to Eugene N. Sosnoff, Esq., 35 Elm Street, New Haven, Connecticut 06510, Attorney for the Plaintiff, on December 10, 1974.

Robert J. Cooney

Robert J. Cooney
-of-
Pullman, Comley, Bradley & Reeves
855 Main Street
Bridgeport, Connecticut 06604

ATTORNEY FOR DEFENDANT-APPELLANT

LAW OFFICES
PULLMAN, COMLEY,
BRADLEY & REEVES
855 MAIN STREET
BRIDGEPORT, CONN. 06604

#47892